



International  
Chamber of Shipping

Shaping the Future of Shipping



# Promoting Maritime Treaty Ratification

The ICS and CMI Campaign





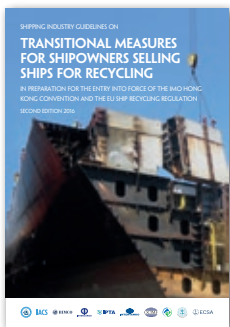
# Priority Conventions for 2018/2019

The following Conventions are the main focus of the current ICS/CMI campaign. Ratification of these instruments by governments is strongly encouraged as a matter of urgency.

## IMO Convention for the Safe and Environmentally Sound Recycling of Ships (Hong Kong), 2009

**What is it?** The Hong Kong Convention sets global standards to improve environmental and working conditions in ship recycling yards, most of which are located in developing nations in Asia.

It requires that end of life ships are only sold to recycling yards that meet the new standards. The Convention also requires ships to maintain inventories of hazardous materials from the time of their construction to their final demolition.



The Hong Kong Convention is fully supported by the shipping industry as demonstrated by the expanded 'Transitional Measures for Shipowners Selling Ships for Recycling', published in 2016 to help shipowners adhere to the Convention as far as practicably possible, in advance of the full implementation of a binding global regime.

**Why is it important?** The entry into force of this Convention will help improve safety and environmental standards in ship recycling yards worldwide. The failure of governments to ratify has led to the establishment of a separate regional regulation in the EU. Ship recycling, however, is a competitive global market that requires global solutions. It is imperative that governments which are serious about improving conditions in recycling yards worldwide make ratification and implementation of the Hong Kong Convention an urgent priority.

**Recent developments** Momentum for ratification might at last be starting to develop, with the world's largest flag State, Panama, having ratified the Hong Kong Convention in 2016. Belgium, Denmark, France and Norway have also ratified the Convention. Major ship recycling nation Turkey recently passed legislation paving the way for formal ratification to take place soon.

## IMO Technical Co-operation

IMO is the United Nations agency with responsibility for the safety and security of shipping and the prevention of marine pollution by ships.

This ongoing ICS/CMI campaign to promote treaty ratification has the full support of IMO which is increasingly focused on the need to further improve the effective implementation of its existing maritime instruments, in addition to its vital rule-making function.

Ratification of treaties is ultimately the responsibility of governments. It is therefore important that governments appreciate that the smooth operation of global shipping can be impeded by any failure on their part to ratify the instruments they have agreed at Diplomatic Conferences.

For treaties to be successful they must also be fully implemented, consistently and effectively. This requires various legislative, administrative and practical measures to be put in place by governments at a national level.



The IMO Member State Audit Scheme, which became mandatory in 2016, is intended to provide States with an objective assessment of how effectively they are implementing key IMO instruments. It also helps governments to identify any areas where they might need additional support or resources.

IMO, through its extensive technical co-operation programme, can provide significant assistance to its Member States (in their capacities as flag, port and coastal States), particularly if they lack the necessary technical expertise or resources to ratify and implement particular instruments. The IMO secretariat is ready to provide assistance in drafting or updating national maritime legislation for the effective implementation of IMO regulations. But it is important to note that in order for IMO to provide such assistance it must first be approached by the nation concerned.

## IMO 2003 Supplementary Fund Protocol to the 1992 Fund Convention

**What is it?** The 2003 Supplementary Fund Protocol (the 2003 Protocol) provides additional compensation above that available under the 1992 Civil Liability and Fund Conventions for pollution caused by oil spills from tankers, but only in those nations that have ratified it.

An essential feature of the CLC/Fund regime is that shipowners accept strict liability for any pollution caused, regardless of actual fault. Compensation payments can thus be made swiftly without protracted legal arguments. The important trade-off is that shipowners are able to limit their liability, so they can obtain the necessary compulsory insurance cover. In the event that valid claims exceed the shipowner's limit of liability, additional compensation is provided by the International Oil Pollution Compensation Fund (1992 Fund) which is financed by contributions from the oil industry.

The 2003 Protocol means that claimants in nations that have ratified it have access to a third tier of compensation, amounting to around US\$ 1 billion per incident – more than three times that available under the 1992 Fund Convention.

**Why is it important?** It is rare for valid claims to exceed the shipowner's limit of liability and require payments from

the 1992 Fund, the majority of claims being met by the shipowners' insurance alone. It is rarer still for an incident to be so large that it exhausts the compensation available entirely. However, on the occasions that this has happened and an incident has not been fully compensated, legal proceedings have been taken to try to obtain additional payments. Some recent national court decisions and national laws have been inconsistent with the way in which the IMO Conventions were intended to operate, potentially undermining confidence in the global regime. The 2003 Protocol was agreed to give States the confidence that a safety net was in place to cover even the largest incidents. It has been in force since 2005, but has been ratified by less than a third of States that have ratified the 1992 Fund. If more States were to ratify it then the far higher levels of compensation available should serve to discourage unhelpful actions at national level.

**Recent developments** ICS has recently proposed that the IOPC Funds governing bodies undertake further study of the obstacles to ratification of the 2003 Supplementary Fund Protocol. This proposal was well received and it is expected that further discussions will take place.

## IMO 2010 Protocol to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS), 1996

**What is it?** The HNS Convention is modelled on the highly successful international oil pollution liability and compensation regime. When it enters into force, it will establish an international regime for HNS damage, the cost of which will be shared between shipowners and HNS cargo receivers. The adoption of the Protocol to the HNS Convention in 2010 was

intended to overcome some of the obstacles to ratification, but governments unfortunately have remained slow to act.

**Why is it important?** The transport of hazardous and noxious substances (HNS) by sea is a major trade. Chemicals and other products underpin many manufacturing processes and IMO regulations ensure their safe transport. However, incidents can occasionally happen and the HNS Convention is needed to ensure that those who might suffer any damage will have access to a comprehensive and global liability and compensation regime, similar to that available to those affected by oil spills. The failure of this Convention to enter into force has given encouragement to regional action, particularly by the EU. Until the HNS Convention enters into force, an existing EU Directive on Environmental Liability for Preventing and Remedying Environmental Damage will apply to HNS incidents in the waters of EU Member States, without the benefits of the international regime.

**Recent developments** In recent years the IMO Legal Committee has been conducting focused work to facilitate the entry into force and implementation of the Convention, resulting in the production of educational materials and the proposed adoption of an Assembly Resolution on the matter. In April 2017 an EU Council decision officially cleared the way for EU Member States to become parties to the Convention. Also in 2017, Norway became the first IMO Member State to ratify the 2010 HNS Protocol and it is hoped that momentum will now build to bring this important instrument into force.



IMO Headquarters, London

# Instruments which would benefit from wider ratification

### IMO Convention on Control and Management of Ships' Ballast Water (BWM), 2004

The BWM Convention entered into force in September 2017. ICS fully supports the intention to prevent invasive marine organisms being inadvertently transported in ships' ballast water tanks, potentially damaging local ecosystems. Now that IMO has addressed many of the concerns raised by the shipping industry, ICS is determined to help make implementation a success. To ensure uniform implementation of what are very complex technical requirements, it is vital that as many nations as possible now ratify this important Convention.

### IMO Protocol of 1997 to MARPOL (Annex VI – Prevention of Air Pollution from Ships)

In 2010, major amendments to MARPOL Annex VI entered into force to reduce sulphur and NO<sub>x</sub> emissions. In 2013, further amendments entered into force concerning technical and operational measures to reduce CO<sub>2</sub> emissions, the first global agreement of its kind covering an entire industrial sector. However, a greater number of ratifications of Annex VI is required to help ensure the avoidance of any unfair competition when the 0.5% global sulphur in fuel cap takes effect in 2020, which will dramatically increase the cost of compliant marine fuel.

### IMO Protocol of 1996 to the Convention on Limitation of Liability for Maritime Claims (LLMC Protocol), 1976

The LLMC Protocol entered into force in 2004 and increased significantly the liability limits for a number of maritime claims. In 2015 a further 51% increase in compensation available for claimants came into effect. This increased amount, agreed under the tacit amendment procedure contained in the Convention, also applies to claims under IMO Conventions governing liabilities for bunker spills and wreck removal. It is hoped that this increase will help ensure that the principle of limitation is maintained, which is vital if shipowners are to continue to have access to affordable insurance. However, more nations still need to ratify the Convention in the interests of global uniformity. In addition, States that have already ratified the Convention need to ensure that the increase in the liability limits is duly implemented in their national legislation.

### IMO Convention on the Facilitation of International Maritime Traffic (FAL), 1965

The FAL Convention is intended to make life easier for ships and their crews by reducing reporting formalities and administrative burdens, and ensuring the highest practicable degree of uniformity when ships enter the ports of other nations. Significant amendments were adopted by IMO in 2016. Despite a high level of ratification in terms of tonnage covered, there is still a need for more widespread ratification by port States, particularly less developed economies which will benefit from the removal of administrative inefficiencies.

### ILO Seafarers' Identity Documents Convention (Revised) (ILO 185), 2003

ILO 185 was adopted as part of the package of maritime security measures following the terrorist attacks of 2001. As a *quid pro quo* for requiring seafarers to carry new identity documents, port States are required to facilitate shore leave and transits to and from ships, for example by not requiring seafarers to obtain visas from overseas consulates in advance of their arrival. As well as addressing the security of port States, the wider ratification of the Convention should materially assist the welfare of seafarers who are increasingly deprived of shore leave in certain countries. In 2016, ILO adopted amendments to the technical annexes of the Convention aligning the requirements of seafarer identity documents with other machine readable travel documents such as e-passports, which should overcome a significant practical obstacle to ratification.

### IMO Nairobi International Convention on the Removal of Wrecks (Nairobi WRC), 2007

The Nairobi Convention entered into force in 2015. It establishes a regime of strict liability for shipowners for the costs of locating, marking and removing hazardous wrecks, backed by compulsory insurance and direct action against insurers. When ratifying, governments are urged to 'opt-in' and extend the application to wrecks within their territorial sea, where most wrecks occur. This will ensure greater international uniformity, and that strict liability and compulsory insurance provisions will apply to the measures taken to locate, mark and remove such wrecks.

## IMO Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (PAL), 1974

The Protocol introduces compulsory insurance for passenger personal injury claims and other mechanisms to assist passengers in obtaining compensation, the level of which is increased significantly compared to the original Convention. The Protocol entered into force in 2014, but more widespread ratification would be desirable to ensure that passengers have access to the same level of protection no matter where in the world they are travelling. When ratifying, governments are urged to make the Reservation contained in the 2006 IMO Guidelines for Implementation of the Athens Convention with respect to the limitation of liability of carriers and insurers, and compulsory insurance/certification for terrorism risks.

## United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (Rotterdam Rules), 2009

The Rotterdam Rules, adopted by the United Nations Commission on International Trade Law (UNCITRAL), are intended to provide a modern cargo liability regime to replace the long-standing Hamburg and Hague/Visby Rules. It is vital that the new regime enters into force to prevent a proliferation of regional cargo liability regulations, and to ensure a global regime that reflects modern 'door to door' services involving other transport modes in addition to the sea-leg, and 'just in time' delivery practices. If the Rotterdam Rules do not take hold then the United States and the EU will almost certainly pursue their own regional regimes and the opportunity for global uniformity will be lost for another generation.



ICS is the international trade association representing all sectors and trades of the shipping industry. Together with representatives of its member national shipowners' associations, ICS participates actively at the committee meetings of the International Maritime Organization (IMO), and contributes significantly to the development of IMO regulations which impact on international shipping. ICS also represents maritime employers as an official 'social partner' at the International Labour Organization.



CMI is an international association of maritime lawyers, established in Antwerp in 1897, the object of which is to contribute by all appropriate means and activities to the unification of maritime law in all its aspects. To this end CMI collaborates closely with IMO on matters of mutual interest. CMI's membership consists of national maritime law associations that work closely with ICS member national shipowners' associations.

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