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112th session  
Agenda item 13

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## WORK PROGRAMME

### **Proposal to add a new output on the work programme on the suitability of IMO liability and compensation regimes with respect to alternative fuels**

**Submitted by Antigua and Barbuda, Australia, Belgium, Canada, Denmark, Fiji, France,  
Germany, Netherlands (Kingdom of the), New Zealand, Norway, Solomon Islands,  
Spain, Tuvalu, Comité Maritime International (CMI) and International Group of  
Protection and Indemnity Associations (P & I Clubs)**

#### SUMMARY

|                                            |                                                                                                                                                                                        |
|--------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Executive summary:</i>                  | This document invites the Committee to agree to add a new output on the work programme on the suitability of IMO liability and compensation regimes with respect to alternative fuels. |
| <i>Strategic direction, if applicable:</i> | 1, 2 and 7                                                                                                                                                                             |
| <i>Output:</i>                             | Not applicable                                                                                                                                                                         |
| <i>Action to be taken:</i>                 | Paragraph 34                                                                                                                                                                           |
| <i>Related document:</i>                   | LEG 111/17                                                                                                                                                                             |

## Introduction and background

1 This document proposes a new output on the suitability of the IMO liability and compensation regimes with respect to alternative fuels. For the purposes of this document, "alternative fuels" includes any means of ship propulsion other than by utilization of hydrocarbon mineral oil.

2 This document is submitted in accordance with paragraph 4.7 of the *Organization and method of work of the Legal Committee* (LEG.1/Circ.14) on the submission of proposals for new outputs, taking into account resolution A.1174(33) on *Application of the Strategic Plan of the Organization*.

3 IMO continues to make concerted efforts to reduce the carbon footprint of shipping. The shift to alternative fuels is an essential part of the solution as IMO work towards net-zero greenhouse gas (GHG) emissions from ships in accordance with the *2023 IMO Strategy on Reduction of GHG Emissions from Ships* (2023 IMO GHG Strategy).

4 As a result, the shipping industry is actively moving away from fossil fuels (including heavy fuel oil and marine diesel, for example) towards using alternative fuels and alternative technologies. The engine-based alternative fuels being pursued include biofuels, hydrogen, methanol and ammonia. Alternative technologies include batteries, wind propulsion and solar power.

5 The Marine Environment Protection Committee (MEPC) and the Maritime Safety Committee (MSC) are making significant progress on regulatory frameworks and guidelines aimed at reducing GHG emissions, increasing the uptake of zero and near-zero GHG fuels, improving energy efficiency, managing/advancing marine fuel alternatives, and ensuring safety in using new technologies and alternative fuels. For example, in 2024, MEPC and MSC endorsed an updated work plan for the development of guidelines concerning alternative fuels, including for hydrogen and ammonia as fuels, low-flashpoint fuels and for methyl/ethyl alcohols as developed by the ninth session of the IMO Sub-Committee on Carriage of Cargoes and Containers (CCC). MSC has since approved guidelines for the use of ammonia as fuel and CCC is progressing guidelines for the use of hydrogen and low-flashpoint fuels.

6 While critical work at various IMO committees and sub-committees to manage and regulate the safe use of alternative fuels is advancing, the existing liability and compensation regimes, which were developed to deal with oil carried as fuel, and oil and hazardous substances carried as cargo, do not appear to be fit for purpose with respect to damage caused by incidents arising from alternative fuels.<sup>1</sup> This position is supported by the work of Comité Maritime International through its International Working Group on Maritime Decarbonization, who documented its findings in detail.<sup>2</sup>

7 To support the 2023 IMO GHG Strategy, and given the increasing prevalence of alternative fuels, investigation into the current liability and compensation regimes and their suitability to address incidents arising from the use of alternative fuels needs further consideration.

### IMO's objectives

8 Resolution A.1173(33) on the *Strategic Plan for the Organization for the six-year period 2024 to 2029* notes that the mission of IMO is to promote safe, secure, environmentally sound, efficient and sustainable shipping through cooperation, achieved through consideration of related legal matters and effective implementation of IMO instruments. Importantly, the

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<sup>1</sup> The regimes include:

- The International Convention on Civil Liability for Bunker Pollution Damage, 2001 (Bunkers Convention) which establishes the shipowner's liability for any hydrocarbon mineral oil intended to be used in the operation and propulsion of a ship;
- The International Convention on Civil Liability for Oil Pollution Damage (CLC), which establishes the shipowner's liability for the bulk carriage of persistent oil as cargo;
- The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (Fund Convention) and the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Supplementary Fund Protocol), which establish oil receiver-financed compensation funds for the bulk carriage of persistent oil as cargo;
- The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010 (HNS Convention), which establishes the shipowner's liability for bulk and packaged carriage of hazardous and noxious substances and creates an international HNS receiver-financed Fund.

<sup>2</sup> Comité Maritime International, July 2024, *The Gothenburg Decarbonisation Discussion Papers: Liability and compensation regimes for incidents on board vessels involving the carriage or consumption of alternative fuels* – see [The Gothenburg Decarbonisation Discussion Papers - Comité Maritime International - CMI](#).

vision of the Organization is to be achieved by applying a focus on the review, development, implementation of and compliance with IMO instruments in IMO's pursuit to proactively identify, analyse and address emerging issues.

9 The proposed work item on the suitability of the IMO liability and compensation regimes with respect to alternative fuels will contribute to delivery within the following IMO strategic directions (SDs):

- SD1 Ensure implementation of IMO instruments supported by capacity development;
- SD2 Integrate new, emerging and advancing technologies in the regulatory framework; and
- SD7 Ensure the regulatory effectiveness of international shipping.

## Need

10 In 2023, a total of 539 ships, equivalent to 45% of all newbuild orders placed by gross tonnage, could run on alternative fuels. In 2022, 55% of all newbuild orders by gross tonnage were alternative fuel capable, up from 27% in 2020 and 8% in 2016.<sup>3</sup>

11 This shows the growing capacity of ships in the global fleet to be powered by alternative fuels, which will increasingly drive decarbonization.<sup>4</sup>

12 The five most common engine-based alternative fuels (ammonia, methanol, hydrogen, biofuels and LNG) each have their own characteristics and present different risks than hydrocarbon mineral fuels. These alternate fuels can be toxic, corrosive, flammable, explosive and can present risks to human health, property and biodiversity. Additionally, other risks are posed by new technology including by batteries used in the operation/propulsion of modern ships.<sup>5</sup>

13 Most of the above fuels would also fall within the definition of “hazardous substances” for the purposes of the HNS Convention if carried as cargo.<sup>6</sup> The Committee may recall that at its 107<sup>th</sup> session, incident data relating to the carriage of HNS cargoes collated by the International Group of Protection and Indemnity Associations for the period January 2010 to September 2019 was submitted. The data showed that of 220 incidents potentially governed by the HNS Convention, 6 incidents were attributable to products that could be used as an alternative fuel.

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<sup>3</sup> Offshore Energy.biz Clarksons: 45% of ships ordered in 2023 embrace alternative fuels, with LNG still in the lead - Offshore Energy ([offshore-energy.biz](https://www.offshore-energy.biz)).

<sup>4</sup> As indicated by the Fourth IMO GHG Emission Study 2020.

<sup>5</sup> See ref 3 [CMI Green Fuels Discussion Paper](#), and [ITOPF Alternative Fuels](#)

<sup>6</sup> International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996, article 1(5) and Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996, article 3.

14 Though accidents involving such substances have been limited, their use as alternative fuels may have a different risk profile than HNS carried as cargo. As the risk varies so too does the nature and extent of damage that could arise in the case of a maritime incident involving alternative fuels, potentially creating environmental harm and financial consequences not yet experienced.

15 In the event an alternative fuels incident does occur, it is unclear whether the existing liability and compensation regimes would effectively assign liability and provide adequate compensation to the affected parties.

16 The regimes established under the Bunkers Convention, CLC, Fund Convention and Supplementary Fund Protocol, and the HNS Convention provide a comprehensive global arrangement for pollution damage from hydrocarbon mineral oil carried as fuel, and oil and hazardous and noxious substances carried as cargo. They each establish strict liability of the shipowner, set limits on that liability, impose insurance requirements to cover the liability, create a direct right of action against the insurer and, in some cases, provide additional compensation from industry-financed funds.

17 These Conventions were drafted before the emergence of alternative fuels and apply in the following situations<sup>7</sup>:

- .1 Bunkers Convention covers any hydrocarbon mineral oil used or intended to be used for the operation or propulsion of ships. Alternative fuels are not mentioned in this Convention, additionally it does not cover loss of life or damage to property;
- .2 CLC/Fund Convention and Supplementary Fund Protocol deal with bulk transportation of persistent oil as cargo on tankers only; and
- .3 HNS Convention deals with a wide range of bulk and packaged transportation of hazardous and noxious substances on ships as cargo only.

18 Without the benefit of the international liability and compensation regimes, liability would have to be established under relevant national law, perhaps with the need to prove negligence or some other fault on the part of the shipowner before compensation could be considered, and the shipowner may not be entitled to limit their liability.

19 This could lead to a fragmented patchwork of liability and compensation regimes, contrary to the preference for international uniformity of maritime law.

20 The co-sponsors unequivocally support the decarbonization efforts under way. However, in their view, further analysis of the existing liability and compensation regimes and the identification of potential solutions to shortfalls is necessary. This Committee has the relevant remit and should not wait until an incident occurs to actively consider this matter.

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<sup>7</sup> Although not directly related to the proposed work outlined in this document, the Legal Committee may also need to review other instruments to ensure that alternative fuels are adequately addressed. For example, the Nairobi Wreck Removal Convention addresses, as a criterion for the hazards of a wreck, "the amount and types of oil (such as bunker oil and lubricating oil) on board the wreck".

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**Analysis of the issue**

21 To deal with the need identified above, the following potential actions by the Committee are proposed:

- .1 building on the analysis of the characteristics outlined in paragraph 12, undertake an analysis of the following conventions to assess their current suitability for responding to claims for injury, pollution or damage (including positive and negative aspects) following an incident arising from, or related to, use of alternative fuels:
  - .1 Bunkers Convention
  - .2 CLC
  - .3 HNS Convention
- .2 if none of the Conventions are currently suitable, using the positive and negative aspects of the existing Conventions, and other relevant information, to recommend the characteristics of a liability and compensation regime that would address claims arising from damage related to alternative fuels; and
- .3 identify and recommend the most suitable mechanism to provide the required characteristics, including by amending a current instrument or developing a new one.

22 The proposal encourages the Committee to proactively consider this new issue to prepare for a situation that, while the co-sponsors hope will not occur, history suggests is virtually certain.

23 The proposed actions are measured, staged and appropriate because they will be evidence based, allow for wide stakeholder engagement and can consider work already undertaken by others, as appropriate.

24 The measures are feasible because the work is within the remit of the Committee. They are proportionate because the risk of doing nothing is not acceptable – to injured parties who want to recover their loss, to shipowners and insurers who want certainty and equal treatment regardless of the fuel being used, and to Governments that do not want to be responsible for the cost of damages.

**Analysis of the implications**

25 The proposal would not result in any costs to the marine industry or any legislative change by States Parties, at this point, as the work is to assess whether the existing regime is adequate and, if not, to consider what an adequate regime would be.

26 Interested States and other stakeholders such as CMI, ICS, the P & I Clubs, non-P&I Clubs insurers and IUMI, will be able to participate in all stages of the proposed actions to deliver a solution that best meets the required outcomes for all parties.

27 The proposal will not impose any ongoing administrative burden nor administrative requirement as understood at this time.

## Benefits

28 The proposal aims to ensure the IMO liability and compensation regime is assessed to determine whether it is adequate to support the adoption of alternative fuels, so the Organization can pre-emptively deliver known, acceptable outcomes for all parties.

## Industry standards

29 Other IMO committees are working to develop relevant frameworks for use of alternative fuels from safety and environmental perspectives. The measures in this proposal complement that work by assessing whether the current liability and compensation regimes are suitable for cover of alternative fuels. No appropriate industry standards currently exist for this purpose.

## Output

30 It is proposed the Committee deliver the following outputs:

.1 Biennium 2024-2025:

- .1 An analysis of the suitability of current liability and compensation regimes (Bunkers, CLC and HNS Convention) to provide adequate compensation for loss arising from risks associated with alternative fuels.
- .2 Should such analysis conclude that the current regimes are not suitable, identify the characteristics of a liability and compensation regime necessary and appropriate to properly address claims arising from injury, pollution and damage related to alternative fuels.

.2 Biennium 2026-2027:

- .1 Identify and recommend the most suitable mechanism to provide for the required characteristics, including by amending a current instrument or developing a new one.

## Urgency

31 Given the issues raised above, it is in the best interest of all Member States to consider the suitability of the current liability and compensation regimes in advance of a major incident involving the use of an alternative fuel.

32 The proposed output falls under IMO's strategic directions 1, 2 and 7. It is estimated that at least three sessions will be required for the Committee to complete the output actions, and it is proposed that this output be placed on the 2024-2025 biennial agenda (and in due course in the 2026-2027 biennium). The proposed date for completion of this output is 2027.

33 To facilitate progression of the required outputs in a timely manner the Committee may wish to consider establishing an informal correspondence group between the LEG 112 and LEG 113 sessions to address paragraph 30, outputs .1.1 and .1.2, and thereafter, if the Council formally approves the new work, establishing a working group at LEG 113 to continue the work and progress to output .2.1 in the same paragraph.

**Action requested of the Committee**

34 The Legal Committee is invited to:

- .1 take note of the information provided in this document;
- .2 agree to include a new output on the 2024-2025 biennial agenda (and in due course on the 2026-2027 biennial agenda), with a target completion date of 2027, on the suitability of IMO liability and compensation regimes with respect to alternative fuels; and
- .3 approve the establishment of an informal intersessional correspondence group between the 112th and 113th sessions of the Committee to progress the delivery of the suggested output.

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## ANNEX

## CHECKLIST FOR IDENTIFYING ADMINISTRATIVE REQUIREMENTS

|                                                                                                                                                                                                                                                                                                                                                                                                                                                    |           |                                                                                       |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|---------------------------------------------------------------------------------------|
| <p>This checklist should be used when preparing the analysis of implications required in submissions of proposals for inclusion of outputs. For the purpose of this analysis, the term "administrative requirement" is defined, in accordance with resolution A.1043(27), as an obligation, arising from a mandatory IMO instrument, to provide or retain information or data.</p> <p><b>Instructions:</b></p>                                     |           |                                                                                       |
| <p>(A) If the answer to any of the questions below is <b>YES</b>, the Member State proposing an output should provide supporting details on whether the requirements are likely to involve start-up and/or ongoing costs. The Member State should also give a brief description of the requirement and, if possible, provide recommendations for further work, e.g. would it be possible to combine the activity with an existing requirement.</p> |           |                                                                                       |
| <p>(B) If the proposal for the output does not contain such an activity, answer <b>NR</b> (Not required).</p>                                                                                                                                                                                                                                                                                                                                      |           |                                                                                       |
| <p>(C) For any administrative requirement, full consideration should be given to electronic means of fulfilling the requirement in order to alleviate administrative burdens.</p>                                                                                                                                                                                                                                                                  |           |                                                                                       |
| <p>1 Notification and reporting?<br/>Reporting certain events before or after the event has taken place, e.g. notification of voyage, statistical reporting for IMO Members, etc.</p>                                                                                                                                                                                                                                                              | <b>NR</b> | <p>Yes<br/><input type="checkbox"/> Start-up<br/><input type="checkbox"/> Ongoing</p> |
| Description of administrative requirement(s) and method of fulfilling it: (if the answer is yes)                                                                                                                                                                                                                                                                                                                                                   |           |                                                                                       |
| <p>2 Record-keeping?<br/>Keeping statutory documents up to date, e.g. records of accidents, records of cargo, records of inspections, records of education, etc.</p>                                                                                                                                                                                                                                                                               | <b>NR</b> | <p>Yes<br/><input type="checkbox"/> Start-up<br/><input type="checkbox"/> Ongoing</p> |
| Description of administrative requirement(s) and method of fulfilling it: (if the answer is yes)                                                                                                                                                                                                                                                                                                                                                   |           |                                                                                       |
| <p>3 Publication and documentation?<br/>Producing documents for third parties, e.g. warning signs, registration displays, publication of results of testing, etc.</p>                                                                                                                                                                                                                                                                              | <b>NR</b> | <p>Yes<br/><input type="checkbox"/> Start-up<br/><input type="checkbox"/> Ongoing</p> |
| Description of administrative requirement(s) and method of fulfilling it: (if the answer is yes)<br>Publishing new documentation for third parties will involve minimal start-up cost for IMO and States.                                                                                                                                                                                                                                          |           |                                                                                       |
| <p>4 Permits or applications?<br/>Applying for and maintaining permission to operate, e.g. certificates, classification society costs, etc.</p>                                                                                                                                                                                                                                                                                                    | <b>NR</b> | <p>Yes<br/><input type="checkbox"/> Start-up<br/><input type="checkbox"/> Ongoing</p> |
| Description of administrative requirement(s) and method of fulfilling it: (if the answer is yes)                                                                                                                                                                                                                                                                                                                                                   |           |                                                                                       |
| <p>5 Other identified requirements?</p>                                                                                                                                                                                                                                                                                                                                                                                                            | <b>NR</b> | <p>Yes<br/><input type="checkbox"/> Start-up<br/><input type="checkbox"/> Ongoing</p> |
| Description of administrative requirement(s) and method of fulfilling it: (if the answer is yes)                                                                                                                                                                                                                                                                                                                                                   |           |                                                                                       |