DEDICATION

To almighty God to whom all praise is due, I say, now thanks be unto God who always causes me to triumph in Christ, and manifest the savour of His knowledge by me in every place.

(Taken from: 2 Corinthians, Chapter 2 and verses 13-15)

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To my husband Ray Andries, for sacrificing his time in our relationship for the sake of my educational development;

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TABLE OF CONTENTS

DRAFT AMENDMENT TO MERCHANT SHIPPING ACT 24/2002

PART I

EXPLANATORY NOTE

THE MERCHANT SHIPPING (AMENDMENT) Bill, No xxx OF 2009)
A BILL to amend the Merchant Shipping Act No. 24 of 2002 to adopt the International Convention on Civil Liability for Bunker Oil Pollution damage, 2001 (hereinafter referred to as "the Bunker Convention").

INTRODUCTION

"...although it is believed that only oil tankers can cause very large spills, oil tankers are not the only ships carrying pollutants. Many bulk carriers and container ships carry bunker fuel of 10,000 tons or more, and they carry larger quantities than many of the world's tankers carry as cargo" [1]

In 1996 the draft Bunker Convention was included in the Work Programme of the International Maritime Institution (IMO) Legal Committee, to make provisions for protection against oil pollution caused by bunker spills. The final text of this Convention, as prepared by the IMO Legal Committee at its 82nd session in the year 2000, was placed before the Diplomatic Conference held at IMO Headquarters in London between 19th and 23rd March 2001.

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[1] http://www.springerlink.com/content/tk4051964573r563/ (web site visited on 7 November 2008)

The IMO has specialized responsibility for the safety and security of shipping and the prevention of marine pollution by ships.

The terms of the Convention provide that it enters into force one year after the date on which 18 States, including five States with ships whose combined gross tonnage is not less than 1 million, have ratified it. Sierra Leone assented on the 21st November 2007 bringing the number of States to the required number for ratification. The Bunker Convention was ratified by 18 States, with a combined gross tonnage of 114,484,743, representing 15.86 per cent of the world's merchant shipping tonnage.

Under the Bunker Convention, ships over 1,000 gross tonnage that are registered in a State Party to the Convention will be required to carry on board a certificate certifying that the ship has 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. In all cases, this amount should not exceed an amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976, (LLMC) as amended.

The Convention has broadened the definition of ship-owner to include the owner, the registered owner, bareboat charterer, manager and operator of the ship.[2] The persons named in the definition will be liable to pay compensation for pollution damage (including the costs of preventative measures) caused in the territory, including the territorial sea of a State Party, as well as in its exclusive economic zone.

[2] Article 1(3) Bunker Convention

Commenting in a news issue, Mr. William O'Neil said that, "The adoption of a Bunker Convention completed the task initiated by the Legal Committee when it was established by IMO more than 30 years ago; namely, the adoption of a comprehensive set of unified international rules governing the award of prompt and effective compensation to all victims of ship-sourced pollution." [3]

This Convention therefore plugged the gap by addressing for the very first time, the problem of pollution caused by the escape of bunker oil from general cargo ships.

St. Christopher and Nevis (thereafter referred to as St. Kitts and Nevis) is not a party to the Bunker Convention. However, there are important reasons[4] for the small twin island Federation of the Caribbean to ratify and domesticate the said Convention. The domestication of the Bunker Convention will come about by an amendment to the Merchant Shipping Act no. 24 of 2002, inserting the relevant provisions of the Convention by Schedule, including a provision giving the force of law to the Convention.

The main reason for the inclusion of the Bunker Convention in the national laws is to provide the Federation of St. Kitts and Nevis with power and jurisdiction in relation to the prevention of, and litigation for, marine pollution caused by the escape or discharge of bunker oil from ships into the internal waters, the territorial sea and the exclusive economic zone (EEZ).

It is also to ensure that adequate, prompt and effective compensation is afforded to persons who suffer damage caused by bunker oil pollution from ships other than oil tankers.

The Bunker Convention has wide coverage which includes container ships, passenger ships and bulk carriers. It is believed that the drafters took into

[3] IMO News, Issue 2, 2001, p.7

[4] Definition is in the explanatory note

consideration the fact that ships sometimes carry larger quantities of bunker oil than that which is carried as cargo in small oil tankers.

The Bunker Convention, which is free-standing instrument covering pollution damage, is modelled on the International Convention on Civil Liability for Oil Pollution Damage, the (CLC1969). The key elements of both conventions include (a) the need for the registered owner of a vessel to maintain compulsory insurance coverage; (b) the right of direct action, which would allow a claim for compensation for pollution damage to be brought directly against an insurer; and (c) the principle of strict liability, which obviates the need to prove negligence.

The CLC 1969 only caters for pollution from persistent oil carried as cargo and persistent oil carried in the form of bunkers, and then only if the bunker was laden at the time of the incident. This was done with the idea in mind that the International Fund for Compensation for Oil Pollution Damage Convention 1971(IOPCF), with its nature of producing compensation from oil industry, would complement the CLC which produced compensation for ship-owners. Regrettably, bunkers on non-tankers were not covered by any compensation regime. The Bunker Convention, therefore, has plugged the gap by addressing the problem of pollution caused by the escape of bunkers from general cargo ships.[5]

While the Bunker Convention follows the CLC precedent in most respects, there are notable differences which will be identified and explained, in addition to summarising the main provision of the Bunker Convention, in the course of this presentation.

AN OVERVIEW OF THE BUNKER CONVENTION

[5] Lloyd Maritime and Commercial Quarterly, 2005 pg 83 - 99

Definitions

For purposes of the Bunker Convention a "ship" is broadly defined as including "any seagoing vessel and seaborne craft, of any type whatsoever."[6] This may appear to be a broad definition, and seems to cover a large number of floating objects as well as traditional ships. However, the Bunker Convention will not apply unless the vessel in question is carrying "bunker oil" which is defined as "hydrocarbon mineral oil, including lubricating oil used for the operation or propulsion of the ship, and any residues of such oil" [7].

The CLC on the other hand defines "owner" as the "person or persons registered as the owner of the ship" thus channeling all responsibility under the CLC to that person.[8] On the face of it, it is therefore not surprising to find that "ship owner" in the Bunker Convention embraces "the owner, including the registered owner, bareboat chatterer, manager and operator of the ship", a much more extensive group of persons. It follows then that whenever liability is imposed on the "ship owner" all persons listed in the definition of ship owner are embraced.

The only other definition that calls for particular comment is the definition of "pollution damage".[9] The term "Pollution Damage" means "loss or damage … by contamination resulting from the escape or discharge of bunker oil". The compensation for impairment of the environment, "other than loss of profit from such impairment" is limited to the cost of reasonable measures of

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[6] BOPC Article 1 (1)
[7] BOPC Article 1 (5)
[8] The CLC Article 1 (3)
[9] BOPC Article 1 (9) " 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 environment other than loss of profit from such impairment shall be limited to cost of reasonable measures of reinstatement actually undertaken or to be undertaken; and (b) the cost of preventative measures and further loss or damage caused by preventative measures.

reinstatement". This definition is in harmony with the definition of pollution damage found in the CLC 1992).[10]

The International Group of P&I Clubs, in its submission to the Diplomatic Conference, drew attention to the fact that when the 1992 Protocol to the CLC was drafted, it was intended to exclude claims with respect to natural resource damage assessment, i.e., claims that fell beyond recovery with respect to restoration or reinstatement. The International Group argued that it was right to seek to exclude these claims on the basis that such claims could be speculative in nature. Unfortunately, the drafting of the 1992 Protocol is widely recognised as defective, since Article III 4 of the CLC may give States the opportunity to introduce domestic legislation permitting recovery with respect to matters which fall outside the definition of "Pollution Damage". The International Group of P&I Clubs suggested that this defect should and could be corrected in the context of the Bunker Convention. Unfortunately, owing to the pressure of time, the International Group was forced to withdraw this proposal. This indeed was an important opportunity missed to have that defect corrected.[11]

Scope of application

Article 2 can be considered as an umbrella for this area, as it covers not only the territory and territorial sea of a State Party, but also within its exclusive economic zone (EEZ) (or equivalent, if there is no EEZ, but not exceeding 200 nautical miles) and also applies to preventative measures taken to prevent or minimise damage in those areas.[12]

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[10] The CLC 1992 Article1 (6)

[11] http://www.springerlink.com/content/tk4051964573r563/ (web site visited on 7 November 2008)

[12] BOPC Article 2

Liability of ship owner

In Article 3 "shipowner" includes a range of persons listed in the definition[13] who are liable unless it is established that the damage resulted from any of the following: an act of war, an act caused by the act or omission of a third party with intent to cause damage, or an act caused by the negligence or wrongful act of any government or other authority responsible for maintaining navigational aids. These limited exemptions from liability match the exemptions contained in the CLC. The shipowner may also be excused from liability where it is shown that the person who suffered the damage caused or contributed to it.

Article 3 also contains a provision to the effect that, where more than one person is liable, the liability shall be joint and several. Two further provisions of Article 3, which follow the CLC format, provide that claims for bunker pollution damage can only be brought against the shipowner under the Convention and not otherwise. However, the right of the shipowner to recover from third parties is expressly preserved.

The International Group of P&I Clubs, in a submission to the Diplomatic Conference, suggested that instead of leaving all those persons embraced by the wide definition of shipowner exposed to claims, it would make sense to "channel" all claims initially to the registered owner. If, and only if, the shipowner failed to satisfy the claim then would the bareboat charterer, manager or operator be exposed to claims. Again, time constraints prevented exploration of this practical proposal and it was withdrawn.

Exclusions

[13] BOPC Article 3

The exclusions[14] will come as no surprise to those familiar with the CLC. The Bunker Convention does not apply to pollution damage covered by the CLC,[15] nor does it apply to pollution from warships or ships on Government non-commercial service[16] unless a State Party decides otherwise.[17] On the other hand, where State owned vessels are used for commercial purposes the Convention applies, including the jurisdiction provisions of Article 9.[18]

Incidents involving two or more ships

Article 5 provides that where an incident involving two ships occurs, and it is not possible to determine from which ship the pollution came, both ships shall be jointly and severally liable.[19]

Limitation of liability

During initial discussions by the Legal Committee, a number of States were keen to see a separate free standing fund provided by shipowners to be exclusively available to satisfy bunker pollution claims. There was strong opposition to this proposal, in particular from the ship owning and insurance sectors, and it was finally agreed that bunker pollution claims would be subject to existing laws of limitation of liability. Thus, bunker pollution damage claimants will have to prove their claims against any available limitation fund alongside other property claims arising out of the same incident.

In a submission to the Diplomatic Conference, the International Group of P&I Clubs (and the BMLA[20] in a separate submission to the UK Department of Transport and the Regions) pointed out that there was a widespread

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[14] BOPC Article 4

[15] BOPC Article 4 (1)
[16] BOPC Article 4 (2)
[17] BOPC Article 4 (3)
[18] BOPC Article 4 (4)
[19] BOPC Article 5
[20] The British Maritime Law Association

assumption that in States where the LLMC[21] applies, it provides a right of limitation for pollution damage caused by bunker spills. It was suggested that this might well be an erroneous assumption. The claims for which liability may be limited are set out in Article 2 (1) of the LLMC, and include claims for loss or damage to property, and claims with respect to loss resulting from infringement of rights. It is strongly arguable that the LLMC may give no general right of limitation for bunker pollution claims which do not involve physical damage to property, or result in infringement of rights (for example, economic loss arising from disruption to a business caused by an oil spill) because such claims cannot be brought within the existing wording of Article 2 (1) of the LLMC.

Because of pressure of time, the International Group was persuaded to withdraw this submission. It is a matter of some disappointment that, the problem having been identified and a solution devised, it was not possible to add a few words to Article 6 which would have put the matter beyond doubt.[22]

It should be noted that the Convention is accompanied by a Resolution[23] 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 or financial security

Compulsory insurance has become a feature of recent liability conventions (notably CLC and HNS), and is likely to feature in future liability instruments such as the proposed Protocol to the Athens Convention of 1974. Article 7 deals in considerable detail with pertaining to the requirements and the necessary administrative systems which will have to be put in place.

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[21] The Convention on Limitation of Liability for Maritime Claims 1976

[22] http://www.springerlink.com/content/tk4051964573r563/ (web site visited on 7 November 2008)

[23] Annex 1 – Conference Resolution on Limitation of Liability

From the outset it has been recognised that requiring shipowners to insure their potential liability, and also requiring each ship to carry a certificate attesting that insurance or other financial security is available, would place additional expense on shipowners and their insurers as well as a considerable additional administrative burden. The same goes for Flag State parties.

Article 7 imposes the obligation to insure on the registered owners of ships having a gross tonnage greater than 1000 gross tons. Not surprisingly, ship-owners and insurers were keen to set a high gross tonnage figure as a threshold at which the compulsory insurance requirement applies. The lower the tonnage threshold figures are, the greater the number of vessels which would require insurance and certification. On the other hand, those States with vulnerable coast lines and few ships flying the flag of their State were keen to set the threshold figure as low as possible, thus ensuring that as many potentially polluting vessels as possible come within the compulsory insurance requirement.[24]

Throughout the week of the Diplomatic Conference, both in the conference hall and in the corridors, discussions and negotiations continued. In looking for a practical solution to the problem, the secretariat of the IMO obtained and supplied delegates with statistics from Lloyds' Register designed to determine whether vessels below a particular tonnage tend to operate on the less polluting lighter oils such as diesel.

Ingenious compromises were proposed, but at the end of the day the threshold figure of 1000 gross tons was proposed by the Conference Chairman, Alfred Popp Q.C., as part of a package deal including entry into force criteria. It is certain that, like all compromises, it failed to satisfy all delegates. As

[24] LEG / CONF 12/4

indicated above, the threshold argument became somewhat three dimensional when it was linked with the question of how many ratifications should be needed before the Convention comes into force, and whether the number of States specified for entry into force should possess a certain minimum tonnage of registered vessels in order to trigger the entry into force requirements.

As part of the overall debate on the need for compulsory insurance, it was proposed, for the first time at the Diplomatic Conference, that State Parties should be free to declare that registered owners should not be required to maintain insurance or other financial security to cover bunker pollution claims where their vessels were engaged exclusively in "domestic voyages".

Debate developed as to whether domestic voyages should be defined simply as voyages starting and finishing within a State's territory or territorial seas or whether it should be extended to include voyages beginning and ending in the much wider area constituted by a State's EEZ. A number of States with complex island or archipelagic waters (such as the Philippines and Indonesia) were keen to see the exclusion extended to the EEZ, on the basis that many inter-island voyages go outside the 12 mile limit of the territorial sea. On the other hand, a number of Mediterranean countries (Cyprus, Malta and Italy) were keen to restrict the exclusion to territorial seas on the basis that the EEZ of adjacent Mediterranean States overlap, and vessels belonging to neighbouring States and operating within their EEZ could represent a serious pollution threat.

In any event, the Conference adopted a compromise proposal put forward by the Chairman[25] to the effect that exclusion would apply only to the territorial sea.

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[25] LEG / CONF. 12/CW/WP.2 (21st March 2001)

Article 7 provides explicit requirements for compulsory insurance and the production of evidence of the existence and quality of such insurance or financial security.

The registered owner is required to maintain insurance or other financial security in an amount equal to the limit of liability under the applicable national or international limitation regime applicable in the Flag State but not exceeding the limitation amounts contained in the LLMC 1976 as may be amended, (see reference above to the Resolution relating to ratification of the 1996 Protocol to the LLMC 1976).

It should be noted that the obligation to obtain insurance rests upon the registered owner,[26] to the exclusion of the other persons who come within the definition of shipowner in Article 1 (3) of the Convention. This may appear anomalous, but it was clearly unsatisfactory for all those defined as ship-owner, to have to carry insurance in accordance with Article 7. It was agreed that, with 'one' compulsory insurance in place, the probability was that in practice all claimants would seek to recover from the registered owner or direct from his liability insurer in reliance on Article 7 (10), and ignore the other potential defendants except in extreme cases.

The certification requirement is extensively described in Article 7. It is clearly stated that the Flag State's responsibility is to issue ships with certificates confirming that appropriate insurance or financial security is in place. This places an administrative burden on States which may not be particularly welcome, since in most instances the insurance will be placed with P&I Clubs. The Clubs will also be involved in further paper work. The extent of this additional work and the cost, have not been calculated.

[26] The Bunker Convention Article 7 (1)

Article 7 goes so far as to list the information which must be contained in the certificate, and a pro forma certificate appears as an Annex to the Convention. It is worth noting that Article 7 provides that a State Party may authorise another institution or organization to issue the certificates. It will be interesting to see whether this power of delegation will be used in practice.

Certificates must be in English, French or Spanish[27] 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 times, and Article 7 specifies in some detail what form of insurance or financial security satisfies the requirements of the Article. If these requirements are not met, the certificate will not be valid.

The Article contains detailed provisions regarding international recognition of certificates, and also provides for the holding of certificates in electronic format.

Direct Action

Tucked away in Article 7 (10) is an important provision, whereby a person claiming compensation for pollution damage may bring that claim directly against the insurer or other person providing financial security. If the insurer is sued, his right to limit in accordance with Article 6 is assured, even where the registered owner, whose liability he insures, has forfeited the right to limit by his conduct. The insurer may also rely upon any defenses available to the ship owner, and may avoid liability if he can establish that the damage resulted from the wilful misconduct of the shipowner. No other policy defenses, which might in normal circumstances be available to the insurer, may be invoked in such a direct action.[28]

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[27] The Bunker Convention Article 7 (4)

[28] The Bunker Convention Article 7 (10)

Insurers are becoming used to the concept of the direct action, even though it breaches old, established concepts of indemnity insurance. The concept of direct action having been conceded in the CLC and in the HNS Convention, it was not strongly opposed by the International Group of P&I Clubs in the context of the Bunker Convention.

Time limits

Claims are extinguished if an action is not brought within three years from the date when the damage occurred, but under no circumstance will an action be allowed if brought more than six (6) years from the date of the incident that caused the damage. This double time provision allows for delay in the manifestation of a claim.[29]

Jurisdiction

The question of jurisdiction has been the subject of extended debate throughout the passage of this instrument through the Legal Committee. This was clearly the desire of delegates to the Diplomatic Conference to give claimants as many options as possible when it comes to the pursuit of claims for compensation. In the event no great choice is available, 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. [30]

Recognition and enforcement

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[29] The Bunker Convention Article 8

[30] BOPC Article 9

Article 10 which deals with recognition and enforcement of judgments[31], requires no major comments.

It may be noteworthy to mention that a late intervention by Sweden on behalf of the European Union in this area caused a little stir.

Supersession Clause

This is a standard clause now found in all International Conventions. It gives the Convention precedence over any other existing Convention, to the extent that there is a conflict between the two instruments.

The other Articles deals with the formal steps required in order to ratify or accede to the Convention.

The Conference, which adopted the Convention, also adopted three additional Resolutions, which are as follows:

I. Resolution on Limitation of Liability.

The Resolution urges all States that have not yet done so, to ratify or accede to the Protocol of 1996 to amend the LLMC, 1976. The 1996 LLMC Protocol raises the limits of liability, and therefore, amounts of compensation payable in the event of an accident are higher than that of the 1976 Convention.

II. Resolution on Promotion of Technical Co-operation.

The Resolution urges all the IMO Member States, in co-operation with IMO, other interested States, competent international or regional organizations and

[31] BOPC Article 10

industry programs, to promote and provide directly or through IMO, support to States that request technical assistance for:

a. the assessment of the implications of ratifying, accepting, approving or acceding to and complying with the Bunker Convention;

b. the development of national legislation to give effect to the Bunker Convention;

c. the introduction of other measures for the training of personnel charged with the effective implementation and enforcement of the Bunker Convention.

III. Resolution on the Protection for Persons taking measure to Prevent or Minimize the effect of Oil Pollution.

The Resolution urges States, when implementing the Bunker Convention, to consider the need to introduce legal provision for the protection of persons who are taking reasonable measures to prevent or minimize the effect of the bunker oil pollution. It recommends that persons taking reasonable measures to prevent or minimize the effect of oil pollution be exempted from liability, unless the liability in question resulted from their personal act or omission, committed with the intent to cause damage, or recklessly and with knowledge that such would be the probably result. It also recommends that States consider the relevant provisions of the International Convention on Liability for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, (HNS) 1996, as a model for their legislation.

As mentioned above, the Bunker Convention is modeled on the CLC, which does not provide for channeling of liability to the shipowner. Therefore, the

adoption of this Resolution is necessary to protect persons performing salvage operations, and any person taking preventative measures, from exposure to liability under the Bunker Convention.

IMO Secretary-General Efthimios E. Metropolis welcomed the latest accession as he said, "I am very pleased to be able to announce today that, following accession by Sierra Leone, the 2001 Bunker Convention will enter into force in 12 months' time. After the entry into force of this convention the Organization will now have in place all the elements of liability and compensation regime for damage caused to the sea by carriage of oils, whether as cargo or as fuel." He further stated that recent accidents involving spills of oil carried as fuel on large ships have shown how important this Convention is, alongside measures to reduce the number of such casualties to a minimum; and despite the best efforts, it must be acknowledged that accidents will happen and, when they do, it is vital that there be a smooth and internationally agreed upon liability and compensation regime in place. He therefore urged those States who have not yet ratified this Convention to do so at the earliest opportunity, so that the percentage of global merchant shipping tonnage covered by it can be as high as possible.

ST. KITTS AND NEVIS' SITUATION

St. Kitts and Nevis, located in the Leeward Islands, is a federal two-island nation in the West Indies. To the north-northwest lie the islands of St. Eustatius, Saba, St. Bartholomew, and St. Martin/Saint Maarten. To the east and northeast is Antigua and Barbuda, and to the southeast are Montserrat and the small uninhabited island of Redonda. Being the smaller island, Nevis lies about 2 miles (3 km) southeast of St. Kitts across a shallow channel called "The Narrows." It is the smallest nation in the Americas, in size and population. The Federation coastlines in the shape of a baseball bat and ball, the two volcanic islands are separated by a three-km-wide channel (The Narrows). On the southern tip of long, baseball bat-shaped Saint Kitts lies the Great Salt Pond; Nevis Peak sits in the centre of its almost circular namesake island; Nevis and its ball shape complements the bat shape of its sister island, St. Kitts.

The maritime zones of St. Kitts and Nevis take the following structure:
Territorial sea: 12 nm
Contiguous Zone: 24 nm
Exclusive Economic Zone: 200 nm
Continental Shelf: 200 nm or to the edge of the Continental Margin

St. Kitts and Nevis' economy is characterized by its dominant Tourism, agriculture and light manufacturing industries. Sugar was the primary export from the 1640's onwards. It was not until recently that the rising production costs, low world market prices and the government's efforts to reduce dependence on the sugar, have led to a growing diversification of the agricultural sector. In 2005 the government, after much consultation both locally and otherwise, decided to close down the State-owned sugar company, which had incurred many losses; therefore there was a significant increase to the fiscal deficit. The former sugar plantations still dominate the St. Kitts

landscape. The agriculture, tourism, export-oriented manufacturing and offshore-banking sectors, are being developed and are now taking larger roles in the country's economy.

Tourism has become the main foreign exchange earner for St. Kitts and Nevis. This is complemented by the lovely hotels, yellow sandy beaches, and the adorable view of our sceneries, especially from strategic points: hence the reason many tourists are attracted to our shores. A large number of these tourists arrive by sea in very large cruise ships. Some of these tourists eventually become business owners in St Kitts or Nevis, which adds to the sea traffic in many ways. One of the ways this is possible is when those business owners import goods for their businesses, which are brought to the Federation by various types of ships.

There are three ports in the Federation: two in St. Kitts and one in Nevis, which contribute significantly to the economy of the Federation; hence the reason that all possible measures should be taken to enhance safety at sea.
It is the intention of the Government to develop the infrastructure and superstructure of the ports, including the construction of a bridge between St. Kitts and Nevis, and to equip personnel to deal with maritime matters. These intentions are strongly pursued by the Maritime Affairs to make them realities. It is quite evident that there are positive strides in their efforts, since an attorney was selected to receive high level training in the area of maritime law at the International Maritime Law Institution (IMLI). The training received will be very beneficial not only to St. Kitts and Nevis, but also to the neighbouring Caribbean islands.

In addition to tankers, the other vessels that come to the ports of St. Kitts and Nevis are mainly cruise ships, cargo ships – containers and Ro-Ro Lo-Lo Lift-on/Lift-off ships, yachts, pleasure crafts, cabin cruisers, Tugs and Barges, Passenger Ferry and car carriers.

The daily ferry service between St. Kitts and Nevis is very important to both locals and visitors alike. It is a feasibly cheap and reliable means of transport between the two islands. Therefore, there are ongoing discussions between government and prospective stakeholders concerning the building of the bridge between St. Kitts and Nevis. Here is another reason why it is imperative that St. Kitts and Nevis takes all possible measures to enhance the safety at sea and protect the marine environment.

Being one of the largest open registries, with gross Tonnage (GT) of 1,268,600, is a good figure for the Federation, but it is also an open door for sub-conditions vessels, especially if certain precautions are not taken. One of the ways to do so is the adoption and implementation of International instruments.

St. Kitts and Nevis has adopted several international marine conventions, and many of these conventions are already enacted in respective national legislations in compliance with International standards.
Presently, St. Kitts and Nevis is engaged in the process of law reform; both national and international laws are addressed.

The maritime Conventions adopted by St. Kitts and Nevis are over 35 in number and include the following;

1. The United Nations Convention on the Law of the Sea, 1982, (UNCLOS)
2. The International Convention on Safety at Sea, 1974, (SOLAS).
3. The International convention on Load Lines, 1966 and 1988.
4. The Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREG).
5. THE International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol 1978, (MARPOL73/78).

6. The International Convention on Tonnage Measurement of Ships, 1969.
7. The International Convention on Civil Liability for Oil Pollution Damage, 1992, (CLC).
8. The Fund Convention, 1971 and "SRD" Protocol, 1976 and 1992.
9. The Convention on Anti Fouling, 2001.
10. Ballastwater Convention, 2004.

Not all of the above Conventions are domesticated; but hopefully they will be during the law reform.

St. Kitts and Nevis has not adopted the LLMC Convention of 1976 or its Protocol 1996, but has made provision for limits of liability in its Merchant Shipping Act, No. 24/2002, in Part XV, Chapter 2 Section 386.

There has been a reported incident of oil spill just outside the waters of St, Kitts, which can be considered a 'wake-up call' for the Federation, and a strong message that, irrespective of the size of a State, as long as there is marine traffic, the possibility of oil spills exists; this includes bunker oil spills.

The Maritime Affairs is sensitizing the public in various ways including radio and television presentations on maritime issues. It follows, therefore, that both the government and public are aware of the importance of navigational safety and security, especially the protection both at sea and shores.

Most of the beaches in St. Kitts and Nevis are very close to public roads, walk ways and dwelling houses, therefore it is easy for whatever effects there are to impact those areas, including the shores of our beaches, within a very short space of time. For example, if a large bunker oil spill takes place in the 'Narrows', because of the size of the islands and the closeness of the beaches to public roads, walk ways and coastline houses, local residents can be

affected by the fumes and slipperiness of oil residue and other effects. For a better understanding of the effect an oil spill in the waters of St. Kitts and Nevis can have, one can take the example from the damage caused to coastline houses and roads due to the closeness of the sea to these places. What is most important to note is, should such an unfortunate event as an oil spill occur, it will have a detrimental impact on the Federation. The solution to this is to be prepared and equipped to take measures if it occurs. According to a very old statement, "Prevention is better than cure."

It is apparent from the foregoing information, that the waters and marine environment of St. Kitts and Nevis are exposed to serious marine and environmental dangers. It can be said that St. Kitts and Nevis is not properly equipped for this type of sea traffic; hence, the Maritime Affairs is taking whatever measures are necessary to ensure safety at sea. These include:

a. the drafting of national laws with respect to maritime safety;
b. making recommendations on the development of the ports;
c. encouraging competitive maritime transport;
d. placing more emphasis on port safety and navigation, in compliance with international standards;
e. developing environmental protection; and
f. adopting and implementing the provisions of international conventions.

Having all of the above in place will indeed make St. Kitts and Nevis a competent, competitive and more attractive haven for ships engaged in international trade within the region. Most importantly, it will enrich its profile, raise the standard and enable the Federation to rank with the contenders for international trade. Despite being a small State, St. Kitts and Nevis can be numbered among its marine neighbours.

Maritime Policy

A Maritime Policy is presently being drafted.

Legislation that is in place regarding maritime

The Laws that are in place in relation to the protection of the marine environment are: the Merchant Shipping Act, (No.24 of 2002), the Maritime Areas Act, the Fisheries Act, the Port Authority Act, the National Conservation and Environment Protect Act, and a Pollution Act is in the draft stage.

HOW ST. KITTS AND NEVIS RATIFIES AND DOMESTICATES INTERNATIONAL INSTRUMENTS

POWER TO MAKE LAWS:

Section 37(1) of the Constitution gives Parliament power to make laws for the peace, order and good governance of St. Kitts and Nevis.

Procedure

Article 42 (1),(2),(3) and (4) of the St. Kitts and Nevis Constitution authorizes the Legislature to exercise the power vested in it to make laws by bills passed by the National Assembly and assented to by the Governor-General.

After ratification of a Convention, as long as that Convention is in line with the objectives of the national maritime policy, then the Maritime Affair Department will commence the necessary internal consultation process, which includes the drafting of a bill for the respective area. The Minister of Public Works and Transport, who is responsible for the Maritime Affairs, will take a draft bill to cabinet to be debated; after which, the draft bill will return to the drafting department with comments and recommendations. The comments

and recommendations are looked over by the drafters, and if there is need for further discussion with the Minister (which is often the case), those meetings will be held and the relevant adjustments will be made. Once it is accepted by the Minister of the Maritime Department, he will make a draft bill, including the explanatory note which summarizes the provisions and the scope of application of the Convention, and reasons for its adoption. The bill is prepared and tabled in National assembly for debate. It then has to go through certain processes before it is passed into law. The Governor-General must first assent to the bill, and then it shall be published in the Gazette as law. No law in St. Kitts and Nevis comes into operation unless it is published in the Gazette, but the Legislature can postpone or make the law retrospective.

The following may be noteworthy for the reader: (i) the reason why this draft speaks to "A draft Bill", is that in St. Kits and Nevis cannot speak of an "Act" in its draft stage since only after it goes through all the processes mentioned above and finally assented to by the Governor-General does it becomes an "Act"; (ii) St. Kitts and Nevis practice what is known as textural amendment, meaning amendments are only done to the existing text. However in the case of amendments such as adding a Convention, it must be done as any other draft bill and is normally added by Schedule. In reference to Regulations they are done separately and do not form part of the Principal Act. Notwithstanding, the aforementioned Regulations are also drafted and is a part of this presentation; (iii) the format that is used to incorporate a bill is to add the amended portion to the end of the last Section of the Principal Act and therefore if the last number is 461 the amended portion will be 461A. This alphabetical order will continue until the amended portion is completed.

The adoption of the Bunker Convention will take the same format as explained above, as Section 3 (1) of the amendment gave the Convention the force of law in St. Kitts and Nevis.

The Government of St. Kitts and Nevis will accede to the Bunker Convention; plans are already under way to domesticate it.

It is respectfully submitted that the Bunker Convention will be effectively implemented, since development of the marine environment is one of the main considerations on the Government's agenda, taking into consideration that safety at sea is paramount for any prosperous State.

Part II

The Merchant Shipping (Amendment) BILL, 2009

No. XX of 2009

A BILL to Amend the Merchant Shipping Act No. 24 of 2002

BE IT ENACTED by the Queen Most Excellent Majesty, and by and with the Advice of the National Assembly of St. Christopher and Nevis, and by the Authority of the same as follows:

1. This Act may be cited as the Merchant Shipping (Amendment) Act, 2009. — Short title

2. In this Act, "Act" means the Merchant Shipping No. 24 of 2002. — Interpretation

3. (1) The Act is amended by the inserting immediately after Section 461 the following new Sections: — Amendment to Principal Act

(2) The Act is amended by inserting immediately after Schedule 5 set out in this Act.

461A. The International Convention on Civil Liability for Bunker Oil Pollution Damage (2001) sets out in the Eighth Schedule to this Act shall have the force of law in St. Kitts and Nevis. — Acceptance to the Convention

SCHEDULE 6

(Section 461A)

"Authority" means the St. Kitts and Nevis Ship Registry in the Department of Maritime Affairs; — Interpretation

"Bunker oil" means 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;

"Civil Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1992, as amended.

“Convention” means the International Convention on Civil Labiality for Bunker Oil Pollution Damage, 2001;

“Director” has the same meaning as in the Principal Act;

"Incident" means any occurrence or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage;

“Insurance certificate” means a certificate attesting insurance or other financial institution or other financial security, such as the guarantee of a bank or similar financial institution which covers liability of the registered owner for pollution damage;

“Minister” means the minister as in the Principal Act;

“Officer” means any officer in the Maritime Affairs or any person employed to perform Port State Control duties;

"Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions;

"Preventive measures" means any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage;

"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 whenever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken;

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

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

"Ship" means the same as in the Principle Act;

"Shipowner" means the owner, including the registered owner, bareboat charterer, manager and operator of the ship;

"State of the ship's registry" means, in relation to a registered ship, the State of registration of the ship and, in relation to an unregistered ship, the State whose flag the ship is entitled to fly.

Application

461B. This Chapter shall apply;

(a) to pollution damage caused;

(i) in the internal waters and the territorial sea of St. Kitts and Nevis, and

(ii) in the EEZ of St. Kitts and Nevis established by The Marine Area Act No. 3 of 1984, it is determined in accordance with international law and extending not more than 200 nautical miles from the baseline from which the breadth St. Kitts and Nevis territorial sea is measured.

(b) to preventative measures, whenever taken, to prevent or minimize such damage;

(c) to pollution damage caused by any ship registered in St. Kitts and Nevis wherever it may be.

Exclusions

461C. (1) This Chapter, unless the context otherwise requests, shall not apply to pollution damage in part XIV, Chapter 1, whether or not compensation is payable in respect of damage under that Section.

(2) Except as provided for in Sub-Section 3, the provisions of this Chapter shall not apply to warships, naval auxiliary or other ships owned or operated by St. Kitts and Nevis and used , for the time being, only for Government and non-commercial services.

(3) With respect to ships owned by the Government of St. Kitts and Nevis and used for commercial purposes, St. Kitts and Nevis shall be subject to suit in the respective jurisdiction and shall waive all defences based on its status as a sovereign State.

Liability of the Shipowner

461D. (1) Except as provided for in Sub-Section 3 and 4, the shipowner at the time of an incident shall be liable for pollution damage caused by any bunker

oil on board or originating from the ship, provided that, if an incident consist of a series of occurrences having the same origin, the liability shall attach to the ship owner at the time of the first of such occurrences.

2. Where more than one person is liable in accordance with Sub-Section 1, their liabilities shall be joint and several.

3. No liability for pollution damage shall be attached to the shipowner if the shipowner proves that;

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

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

(c) the damage was wholly caused by the negligence or other wrongful acts of St. Kitts and Nevis Port Authority, who are responsible for the maintenance of lights or other navigational aids in the exercise of that function.

4. If the shipowner proves that the damage resulted wholly or partially either from an act or omission done with the intent to cause damage by the person who suffered the damage or from the negligence of that person, the shipowner may be exonerated wholly or partially from liability to such person.

5. No claim or compensation for pollution damage shall be made against the shipowner otherwise than in accordance with this Act.

6. Subject to Sub-Section 7, no claim for compensation for damage may be made against:

(a) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;

(b) any person taking reasonable measures to prevent or minimize the effects of bunker oil pollution; and

(c) the servants or agents of persons in (a) and (b), unless the liability in question resulted from their personal act or omission, committed with the intent to cause damage, or recklessly and with knowledge that such damage would probably result.

7. Nothing in this Chapter shall prejudice any existing right of recourse of the owner against any third party, including the persons indicated in Sub-Section 6.

8. Nothing in this Chapter shall prejudice any right of recourse of the shipowner which exists independently of this Chapter.

Incidents Involving two or more ships

461E. When an incident involving two or more ships occurs, and pollution damage results there from, the ship owners of all the ships concerned, unless exonerated under Section 365, shall be jointly and severally liable for all such damage which is not reasonably separable.

Limitation of liability shipowner

461F. Nothing in this Chapter shall affect the right of the person or persons providing insurance or other financial security, to limit their liability under section Part XV Chapter 2.

Compulsory Insurance or financial security

461G. (1) The Minister may make regulations (in this Act referred to as "Bunkers Certificate Regarding Compulsory Insurance or Other financial Security Regulations")

(2) The said regulations shall include requirements as appear to the Minister to be necessary to implement the provisions of the Bunker Certificate in relation to Compulsory Insurance or Financial Security.

(3) 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 financial security such as the guarantee of a banker 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 Part VX Chapter II of the Principle Act.

(4) Any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the registered owner's liability for pollution damage. In such a case, the defendant may invoke the defenses which the shipowner would have been entitled to invoke, (other than bankruptcy or winding up) including limitation of liability of the ship owner pursuant to Section 367;

(b) the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained in accordance with Sub-Section 3, moreover, the defendant may invoke the defense that the pollution damage resulted from the wilful misconduct of the shipowner, but the defendant shall not invoke any other defense which the defendant might have been entitled to invoke in proceedings brought by the shipowner against the defendant;

(c) the defendant shall in any event have the right to require the shipowner to be joined in the proceedings.

Time Limits

461H. Rights to compensation under this chapter shall be extinguished unless an action is brought there under within three years from the date when the damage occurred. However, in no case shall an action be brought more than six years from the date of the incident which caused the damage. Where the incident consists of a series of occurrences, the six year period shall run from the date of the first such occurrence.

461I. Where an incident has caused pollution damage in the territory, including the territorial sea, or in an area referred to in article 363 (a) (i) and (ii), or preventive measures have been taken to prevent or minimize pollution damage in such territory, including territorial sea, or in such area, actions for compensation against the shipowner, insurer or other person providing security for the ship owner's liability may be brought only in the Supreme Court of St. Kitts and Nevis. Jurisdiction

461J. A model Certificate shall be annexed to this Section.

Curtis Martin
Speaker

Jose Lloyd.
Clerk of National Assembly

PART III

EXPLANATORY NOTES ON REGULATIONS, (BUNKER'S CERTIFICATE REGARDING COMPULSORY INSURANCE OR OTHER FINANCIAL SECURITY) REGULATIONS, No. X OF, 2009

St. Kitts and Nevis' adoption of marine pollution international conventions aims to establish the legal framework to deal with any challenge that may occur. This explains the reason St. Kitts and Nevis has adopted the majority of international conventions, specially regulating the civil liability of shipowners in the case of pollution damage to the marine environment.

The adoption of the "Bunker Convention" will be a landmark progress in the protective regime for environmental hazards from any type of ship, and not only tankers which are perceived to be the major cause of threats to environment. This convention offers constructive action that must be taken to deal with the problem.

There has been a significant increase in calls by ships over 1,000 gross tonnage at the ports of St. Kitts and Nevis; it is therefore imperative to comply with the provision of the Convention which will be enshrined in the (amended) Merchant Shipping Act, No. xx of 2009, in particular subsection (3) of Section 368. It addresses the registered owner of a ship, who is obliged to have a compulsory insurance or other financial security, such as the guarantee of a bank or similar institution to cover liability for pollution damage. A certificate (here referred to as the "insurance certificate") to prove that this insurance or financial security is enforced for ships issued by the designated authority of a State that is party to the Convention. Article 7 of the Convention, and Section 368 (3) of the (amended) Merchant Shipping Act, 2009, provides for a claim to be brought against the insurer.

The incorporation of the provisions of the Bunker Convention into the Principle Act, affirms a legal mechanism for the payment of adequate, prompt and effective

compensation to victims of pollution caused by the escape or discharge of bunker oil from ships.

The Bunker Convention detailed the requirements and form of the insurance certificate, but it is left to States to determine when the conditions under such certificate of insurance are fulfilled. It is also up to States to designate a competent authority to issue or to certify such certificate of insurance, and to legislate rules on administrative procedure with which the ship owner has to comply.

The adoption of this Convention aims to establish the necessary legal framework for the full and effective implementation of the Bunker Convention. It provides *inter alia,* which ships are required to maintain an insurance certificate, which are the administrative procedures to comply with, the rights and obligations of the competent Authority, the duties of the Port State Control Officer.

There will be no negative financial implications on the State budget, as it only looks for the fulfillment of the international obligations to be undertaken when St. Kitts and Nevis accedes.

THE MERCHANT SHIPPING (BUNKER CERTIFICATE REGARDING COMPLUSORY INSURANCE AND OTHER FINANCIAL SECURITY) REGULATIONS, 2009

Arrangement of Regulations

Regulations

SAINT CHRISTOPHER AND NEVIS
STATUTORY RULES AND ORDERS
No. x of 2009

MERCHANT SHIPPING (BUNKER CERTIFICATE REGARDING COMPLUSORY INSURANCE OR OTHER FINANCIAL SECURITY) REGULATIONS, 2009

In the exercise of the power conferred under Section 378 of The Merchant Shipping (Amendment) Act, No. xx of 2009, the Minister responsible for Maritime Affairs makes these Regulations

[Published x of xxxx 2009, Official Gazette No. x of 2009]

1. **CITATION.** These Regulations may be cited as the Merchant Shipping (Bunker Certificate Regarding Compulsory Insurance or Other Financial Security) Regulations, 2009.

2. **INTERPRETATION.** (1) In these Regulations

"Act" means the Merchant Shipping (Amendment) Act, No. xx of 2009;

"Authority" means the St. Kitts and Nevis Ship Registry in the Maritime Affairs;

"authorised person" means a person authorised in writing by or on behalf of the Director for the purpose of these regulations;

"Bunker Convention" means Convention as referred in the Principal Act;

"bunker oil" means as referred to in Principal Act;

"Director" means as referred to in the Principal Act;

"insurance certificate" means as referred to in the Act;

"Minister" means as referred to in the Principal Act;

"officer" means as referred to in the Act";

"Principal Act" means the Merchant Shipping Act, No. 24 of 2002"

3. **APPLICATION OF REGULATIONS.** These Regulations shall apply to-

(a) The registered owner of any ship having gross tonnage of 1,000 and is entering or leaving a port of St. Kitts and Nevis territory, or arriving at or leaving an offshore facility in its territorial sea, 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 Article 7 of the Convention.

(b) The registered owner of a ship registered in St. Kitts and Nevis having a gross tonnage of 1,000 and above, wherever it 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 Regulation (3) (a).

4. APPLICATION FOR CERTIFICATE. The Authority must, in relation to each application:

(a) if it is satisfied that the owner of the ship is maintaining insurance or other financial security for the ship in an amount that will cover the liability prescribed by Article 7 of the Convention (which deals with issuing or certifying of insurance certificates to applicants) issue or certify an insurance certificate to the ship; or

(b) if the authority is not satisfied, it can refuse to issue or certify an insurance certificate to the ship.

(c)The registered owner of a ship that is registered in St. Kitts and Nevis or in a State that is not a contracting State, may apply to the Authority for a certificate of insurance for the ship.

5. DUTY TO ISSUE CERITICATES

(a) The Authority shall issue a certificate attesting that insurance or other financial security is in force, according to the provisions of these Regulations and the Convention to each ship registered in St. Kitts and Nevis, upon determination that the requirements in Regulation 3 have been complied with.

(b) The Authority is empowered by the Minister with respect to a ship owned by a State Party, that the provisions of these Regulations shall not apply to such a ship, but the ship shall carry a certificate issued by the appropriate Authority of the State of the ship registry, stating that the ship is owned by that State and that the ship's liability is covered, in accordance with the limit prescribed by the Convention. Such certificate shall follow as close as possible the model annexed;

(c) to issue or certify certificates to ships registered in States that are not contracting States, attesting that the insurance certificate is in force, in accordance with the provision of the convention.

(d) The certificate shall be in the form of the model set out in the annex to these Regulations and shall contain the following particulars;

(i) the name of ship, distinctive number, letters and port of ship registry;

(ii) the name and principal place of business of the registered owner;

(iii) the IMO ship identification number;

(iv) type and duration of security;

(v) name and principal place of business of insurer or other persons giving security and where appropriate, place of business where the insurance is established;

(vi) period of validity of certificate, which shall not be longer than the period of validity of the insurance or other security.

(c) The Authority shall not permit a ship under its flag to which these Regulations apply, to operate at any time, unless a certificate has been issued.

(d) The certificate shall be in English.

6. ENTRY INTO FORCE. Subject to these Regulations:

(a) an insurance certificate comes into force on the day stated in the certificate and remains in force until the expiration of the day stated in the certificate; or if it is cancelled by the Authority or withdrawn;

(b) a ship for which an insurance certificate has been issued or certified by the Authority of St. Kitts and Nevis, and not at a port in St. Kitts and Nevis, at the date when the Insurance certificate expires, and the Authority is satisfied that the date stated in the certificate is the expiration date until which the certificate remains in force, and there is in force a contract of insurance or financial security for the ship in an amount that will cover the limits of liability prescribed by Article 7 of the Convention in relation to the ship and the Regulation 3.

(c) The Authority may extend the insurance certificate and the extension of such certificate shall expire upon the ship's arrival to the any port in St. Kitts and Nevis;

(e) if, while an issued or certified insurance certificate is in force for a ship registered in St. Kitts and Nevis, or a certificate issue or certified by a State that is not a Contracting State is in force, the ship ceases to be registered in St. Kitts and Nevis or in that State, as the case may be, the certificate ceases to be in force when registration ceases.

7. DUTY TO CARRY CERTIFICATES. The certificate shall be carried on board the ship, and the St. Kitts and Nevis Ship Registry shall maintain a copy for a period of five years after the certificate expires.

8. INSPECTION. The officer during the inspection of a ship may require the Master or other person in charge of a ship, and attempting to take the ship out of the Port of St. Kitts and Nevis at a time when the ship does not have on board a relevant insurance certificate that is in force for the ship, the Officer may detain the ship until such a certificate is obtained or produced to the Authority as the case requires.

9. CANCELLATION. When a certificate issued or certified by the Authority of St. Kitts and Nevis is cancelled or ceases to be in force, the registered owner shall without delay cause the certificate to be lodged with the Authority.

10. WITHDRAWAL OF CERTIFICATE. The Authority shall withdraw the insurance certificate issued to a ship registered in St. Kitts and Nevis or in a State that is not a Contracting State, if the condition under which it was issued is not maintained.

11. DUTY TO INFORM THE MINISTER. The Authority shall inform the Minister with respect to certificates issued, certified or withdrawn from ships registered in St. Kitts and Nevis or in a State that is not a Contracting State.

12. CONDITIONS TO BE SATISFIED. The requirements of these Regulations are not satisfied if an insurance certificate or financial security can cease for reasons other than cancellation by the Authority, withdrawal, or the expiry of the period of validity of

the insurance or security, before three months have elapsed from the date on which notice of its termination is given to the Authority, unless the certificate has been surrendered to the Authority, or a new certificate has been issued within that period.

13. **DUTY TO COMPLY.** Subject to Regulations 3, every owner shall comply with the requirements of these Regulations as they apply to any ship owned by him.

14. OTHER SHIPS. If insurance or other financial security is not maintained with respect to a ship owned by a State Party, the provision of this Article relating thereto shall not be applied to such ship, but the ship shall carry a certificate issued by the appropriate authority of the State of the ship registry, stating that the ship is owned by that State and that the ship's liability is covered within the limit prescribed, in accordance with the Article 7of the Convention and Section 393 of the Principal Act.

15. SHIPS OWNED BY THE GOVERNMENT OF ST. KITTS AND NEVIS. If insurance or other financial security is not maintained with respect to a ship owned by the Government of St. Kitts and Nevis, the provisions of these Regulations relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the St. Kitts and Nevis Registry stating that the ship is owned by the Government of St. Kitts and Nevis and that the ship's liability is covered within the limit prescribed in accordance with Regulations 1, and as prescribed in the Convention.

16. **DUTY OF THE OWNER**. The owner of every ship shall operate his ship in accordance with the certificate, and on the basis for which the certificate was issued;

17. DUTY OF AUTHORITY TO DETERMINE CONDITIONS. For ships registered in St. Kitts and Nevis, the St. Kitts and Nevis Ship Registry shall, subject to the provisions of these Regulations, determine the conditions of issue and validity of the certificate.

Minister responsible for Maritime Affairs

ANNEX

CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF LIABILITY FOR THE BUNKER OIL POLLUTION DAMAGE

Issued in accordance with the provisions of Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001:

Name of Ship	Gross Tonnage	Distinctive number of letters	IMO Ship Identification Number	Port of Registry	Name and full address of the principal place of business of the registered owner

This is to certify that there is in force, with respect to the above-named ship, a policy of insurance or other financial security satisfying the requirements of Article 7 of the International Convention on Liability for Bunker Oil Pollution Damage, 2001.

Type of Security

……

Duration of Security

……

Name and address of the insurer(s) and/or guarantor(s)

Name……

Address……..

This certificate is valid

Until…….....

Issued or certified by the Government of……

(Full designation of the State)

OR

The following text should be used when a State Party avails itself of Article 7, paragraph 3:

The present certificate is issued under the authority of the Government of

…….....

(full designation of the State) by……(name of institution or organization)

At……..On……..

(Place) (Date)

…….

(Signature and Title of issuing or certifying official)