

A Brief Introduction to the International Convention on Liability and Compensation for Bunker Oil Pollution Damage (The Bunkers Convention)

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Introduction

1. The International Convention on Liability and Compensation for Bunker Oil Pollution Damage, 2001 (Bunkers Convention) came into force on 21 November 2008.
2. Ships trading in the 26 Party States that have ratified this Convention will need to hold evidence certifying that they have insurance cover for liability arising from pollution damage by bunker oil. The 26 Party States, consisting of about 40.17% (as at 31 August 2008) of the world's tonnage are Bahamas, Bulgaria, Cook Islands, Croatia, Cyprus, Denmark, Estonia, Germany, Greece, Hungary, Jamaica, Latvia, Liberia, Lithuania, Luxembourg, Marshall Islands, Norway, Poland, Samoa, Sierra Leone, Singapore, Slovenia, Spain, Tonga, United Kingdom and Vanuatau.
3. This Convention was adopted to ensure that adequate, prompt, and effective compensation is available to persons who suffer damage caused by spills of oil, when carried as fuel in non-tanker vessels. It is also aimed to provide an adequate, prompt and effective compensation regime for pollution damage caused by spills of bunker oil from ships other than tankers.
4. The salient features of the Convention are:
 - a. Requirement for registered owners of a ship with a gross tonnage greater than 1,000 to maintain insurance or other financial security to cover their liability and to carry a certificate on board attesting such insurance coverage.
 - b. Strict liability of shipowners for all types of pollution damage caused by bunker oil, but subject to the limits of applicable national or international regimes not exceeding an amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

- c. Direct action by claimants against the provider of the insurance or other kinds of financial security.

Why is the Bunkers Convention necessary?

5. The major reason for the introduction of the Bunkers Convention was that general cargo ships carry more oil as bunkers than oil cargo carried on board tankers, and yet there was no uniform international convention covering spills from vessels other than tankers.

6. The UK P&I Club's Analysis of Major Claims 1993 revealed that

"...*half* of the total number of pollution claims arose from incidents involving ships not carrying oil cargo."

7. In addition, data demonstrated at the Oil Spill Intelligence Report confirmed that most spillage cases were caused by non-tanker vessels rather than tankers. It is also noted that resolving bunker spills from non-tankers was far *more difficult* by the lack of a liability and compensation regime, while the nature of fuel oil itself made spills of such oils more difficult and *more costly to clean up*.

CLC only caters for tanker but not cargo ship

8. Although the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended (CLC), covered spills, including spills of bunker oil, from vessels constructed or adapted to carry oil in bulk as cargo, there were no provisions for bunker spills involving vessels other than tankers. Oil spills from tankers, including bunker spills, are covered under the CLC that applies to all seagoing vessels actually carrying oil as cargo.

9. The Bunkers Convention came about because the current regimes covering oil spills did not include bunker oil spills from vessels other than tankers. It is aimed to fill in the significant gap in the international regime for compensating victims of oil spills from vessels.

A Convention on liability coverage for cargo ships

10. The Bunkers Convention only applies to vessels other than tankers. It is applicable

to damage caused in the territory, including the territorial sea, of State Parties, and in the exclusive economic zones of States Parties, or if a State Party has not established such a zone, in an area beyond and adjacent to the territorial sea of that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured.

11. The Bunkers Convention covers liability and compensation for pollution damage caused by oil spills when carried as fuel in non-tanker vessels.

12. "Pollution damage" means:

- a. loss or damage caused outside the ship by contamination resulting from the escape or discharge of bunker oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and
- b. costs of preventive measures and further loss and damage caused by preventive measures.

13. This Convention is modelled on the CLC. As with that of the CLC, a key requirement in the Bunkers Convention is the need for the registered owner of a vessel to maintain compulsory insurance cover.

14. Another key provision is the requirement for direct action - this would allow a claim for compensation for pollution damage to be brought directly against an insurer.

Mandatory Insurance

15. The Convention requires ships over 1,000 gross tonnage to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover the liability of the registered owner for pollution damage in an amount equal to the limits of liability under the applicable national or international limitation regime, but in all cases, not exceeding an amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976, as amended under the 1996 LLMC Protocol, which entered into force in 2004.

Other Resolutions in relation to the Bunkers Convention

16. Three additional resolutions were also adopted and Party States are urged to comply with:

- a. 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 Convention on Limitation of Liability for Maritime Claims, 1976. The 1996 LLMC Protocol raises the limits of liability and therefore amounts of compensation payable in the event of an incident, compared to the 1976 Convention.

For ships not exceeding 2,000 gross ton (gt), liability is limited to 2 million SDR (US\$2.56 million) for loss of life or personal injury and 1 million SDR (US\$1.28 million) for other claims. Liability increases with tonnage to a maximum above 70,000 gt of 2 million SDR (US\$2.56 million) + 400 SDR (US\$512) per ton for loss of life or personal injury, and 1 million SDR (US\$1.28 million) + 200 SDR (US\$256) per ton for other claims.

- b. Resolution on promotion of technical co-operation – the resolution urges all IMO Member States, in co-operation with IMO, to promote and provide support to States that request technical assistance for implementation of the Bunkers Conventions.
- c. Resolution on protection for persons taking measures to prevent or minimize the effects of oil pollution - the resolution urges States, when implementing the Bunkers Convention, to consider the need to introduce national legislation for protection for persons taking measures to prevent or minimize the effects of bunker oil pollution. It recommends that *persons taking reasonable measures to prevent or minimize the effects of oil pollution be exempt 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 damage, would probably result.

Effects on companies operating non-tankers

17. In addition, under the Bunkers Convention, a claim for compensation for pollution

damage can be brought **directly against an insurer**. The Convention requires ships over 1,000 gross tonnage to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover the liability of the registered owner for pollution damage in an amount equal to the limits of liability under the applicable national or international limitation regime, but in all cases, not exceeding an amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

Problems associated with the ships registered in non State Parties

18. Under Article 7(2) of the Bunkers Convention, ships registered in a State Party need only obtain a certificate (“Bunkers Certificate”) from that State. This will be treated as evidence of insurance when calling at any port or terminal in any State Party. The Bunkers Certificate will be issued against the provision of an evidence of insurance (“Blue Card”). The valid period of the State certificate will be the same as that stated in the Blue Card.
19. Under the same Article, ships registered in a state which is not a party to the Convention may also obtain Convention Certificate from a State Party to the Convention. However there are a number of State Parties which remain reluctant to issue certificates for ships registered in non-State Parties calling at their ports due to the administrative burden involved in issuing possibly a large number of certificates.
20. On the other hand, since the Blue Card is required to be addressed to a State Party that is willing to issue certificates for ships, P&I Clubs will not issue an insurance certificate (Blue Card) to ships registered in a non-State Party without first identifying such State Party. Without a P&I Club Blue Card, i.e. the evidence of insurance, a number of ships of non State Parties will not be able to obtain the Bunkers Convention Certificate when it became effective from 21 November 2008.
21. By the time when this article comes to light, the Convention will have become effective. In the absence of a valid certificate issued pursuant to the Bunkers Convention, ships from non State Parties could likely face unnecessary delay or even detention in the ports of a State Party, unless some other measures are to be taken by the IMO and P&I Clubs.
22. At the time of writing, it is known that Liberia deposited the instrument with IMO on 21 August 2008 and is willing to issue a Bunker Certificate for ships of non Party

States. It is expected that within three months after deposit of instrument, Liberia could become a Party State by 21 Nov 2008. Application for such a Certificate may be sent to the Liberian Office between 28 August 2008 to 15 October 2008. The fee for issuance of a certificate to Non Liberian Registered Vessels is US \$450. Detailed information can be found in the Marine Operations Notes: 02/2008 and 05/2008 issued by the Bureau of Maritime Affairs of Liberia.