

## **THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE, 2001**

In March 2001, the International Maritime Organization adopted a new International Convention on Liability for Bunker Oil Pollution Damage. The Convention, once ratified, will impose various burdens on non-tanker vessel operators, without, it must be stated, bringing any substantial or significant benefit to the victims of bunker oil spills.

*What is the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, about?*

**Objectives** - The International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, 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.

**Geographical scope** - The Convention applies to damage caused on 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 determined by 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.

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

"Pollution damage" means:

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

The convention is modelled on the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended, which was adopted to ensure that adequate compensation is available to persons who suffer oil pollution damage resulting from maritime casualties *involving oil-carrying ships*. As with that Convention, a key requirement in the Bunkers Convention is the need for the registered owner of a vessel to *maintain compulsory insurance cover*.

Another key provision is the requirement for *direct action* - *this would allow a claim for compensation for pollution damage to be brought directly against an insurer*. The Convention requires ships over 1,000 gross tonnage to maintain insurance (presumably in a form similar to a COFR), 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.

**Resolutions of the Conference** - The Conference which adopted the Convention also adopted three additional resolutions:

- 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 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 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.

The LLMC Protocol will enter into force 90 days after being accepted by 10 States;

- ii. **Resolution on promotion of technical co-operation** - the resolution urges all IMO Member States, in co-operation with IMO, other interested States, competent international or regional organizations and 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 Convention;
  - b. the development of national legislation to give effect to the Convention;
  - c. the introduction of other measures for, and the training of personnel charged with, the effective implementation and enforcement of the Convention;
- iii. **Resolution on protection for persons taking measures to prevent or minimize the effects of oil pollution** - the resolution urges States, when implementing the 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.<sup>1</sup> 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. It also recommends that States consider the relevant provisions of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as a model for their legislation.

**Entry into force** - The Convention is set to enter into force, twelve (12) months following the date on which eighteen (18) States, including five (5) States each with ships whose combined gross tonnage is not less than one (1) million gt have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the IMO Secretary-General. The unusually high number of states required to ratify the Convention may mean it will not come into force in the foreseeable future.

The Protocol of 1996 to amend the Convention for Maritime Claims, which formulated the limits of liability and the amounts of compensation payable in the event of pollution, required only 10 signatories and is still to be ratified. In fact, so far, only four States have adopted that Convention.

*Does the Bunker Convention apply to oil tankers?*

No. Oil spills from tankers, including bunker spills, are covered by the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended. This Convention was adopted to ensure that adequate compensation is available to persons who suffer oil pollution damage resulting from maritime casualties involving oil-carrying ships. The Convention applies to all seagoing vessels actually carrying oil in bulk as cargo, but only ships carrying more than 2,000 tons of oil are required to maintain insurance in respect of oil pollution damage.

The Convention covers pollution damage resulting from spills of persistent oils suffered in the territory (including the territorial sea) of a State Party to the Convention. The Protocol of 1992 extended the scope of the 1969 Convention to also cover the exclusive economic zones (EEZ) of the State Parties. It is applicable to ships which actually carry oil in bulk as cargo, i.e. generally laden tankers, but the Protocol of 1992 also extended the 1969 Convention to cover spills from sea-going vessels constructed or adapted to carry oil in bulk as cargo so that it now applies to both laden and unladen tankers, *including spills of bunker oil from such ships*. However, bunker spills from ships other than tankers are not covered by the Convention or Protocol.

You should also be aware, that there are year 2000 Amendments to the International Convention on Civil Liability for Oil Pollution Damage, 1969, which have raised the compensation limits for persons who suffer oil pollution damage, as follows:

For a ship not exceeding 5,000 gross tonnage, liability is limited to 4.51 million SDR (US\$5.78 million). Under the 1992 Protocol, the limit was 3 million SDR (US\$3.8 million).

For a ship 5,000 to 140,000 gross tonnage, liability is limited to 4.51 million SDR (US\$5.78 million) plus 631 SDR (US\$807) for each additional gross ton over 5,000. Under the 1992 Protocol, the limit was 3 million SDR (US\$3.8 million) plus 420 SDR (US\$537.6) for each additional gross ton).

For a ship over 140,000 gross tonnage, liability is limited to 89.77 SDR (US\$115 million). Under the 1992 Protocol, the limit was 59.7 million SDR (US\$76.5 million).

*What is the Bunkers Convention's affect on companies operating vessels other than tankers?*

The Bunkers Convention came about because the current regimes covering oil spills did not include bunker oil spills from vessels other than tankers. In this regard, the need for a Bunkers Convention was highlighted in 1996 in a joint submission to the 75th session of the Legal Committee by Australia, Canada, Finland, Norway, South Africa, Sweden and the United Kingdom. It referred to the UK P&I Club's Analysis of Major Claims 1993 which had stated that "...half of the total number of pollution claims arose from incidents involving ships not carrying oil cargo."

In addition, Oil Spill Intelligence Report data confirmed that even for larger spills the number of non-tanker vessel spills was significantly greater than the number of tanker spills. Dealing with bunker spills from non-tankers was made 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.

**Effects on companies operating non-tankers** - As stated earlier, the Bunkers Convention requires the registered owner of a non-tanker vessel to maintain *compulsory insurance cover*.

In addition, under the 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.

**Conclusion** - The Bunkers Convention came about after many discussions, having first being mooted during debates on the 1992 Protocols to the International Convention on Civil Liability for Oil Pollution Damage, 1969 and the 1971 IOPC (FUND). The main reason for its re-introduction was that general cargo ships carry more oil as bunkers than tankers carry as cargo, and there was no uniform international legislation covering spills from vessels other than tankers.

The Bunkers Convention was brought about, therefore, to fill the last significant gap in the international regime for compensating victims of oil spills from vessels. The Convention establishes a liability and compensation regime for spills of oil when carried as fuel in non-tanker vessels' bunkers.

Although the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended, 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. In this regard, and confirming your presumption, the Bunkers Convention only applies to vessels other than tankers.

As to the effects of the Convention on companies operating vessels other than tankers, the Bunkers Convention is very much based on the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended, and will have similar effects. As stated earlier,

however, it is important to note that although the Bunkers Convention has now been adopted by the International Maritime Organization, the unusually high number of states required to ratify the Convention (18 states, including five (5) each with ships whose combined tonnage is not less than 1m gt), may mean that it will not come into force in the foreseeable future.

It is also noteworthy that a major issue at the adoption meeting of the Convention was the threshold for compulsory insurance. The U.K., Australia and Canada delegations promoted the view that vessel of 300 gt and above should be included, on the basis that the widest range of vessels should be addressed. However, due to what one delegate characterized as "pressure from the flag states wanting to limit the burden on shipowners" and the "desire to arrive at a convention by the end of the meeting", the higher 1,000 gt starting point was agreed. In addition, last-ditch efforts to limit preventing or minimizing the affects of salvor exposure to claims, should they cause pollution while trying to assist in oil spills, and to include a clause protecting those taking preventive measures ("responder immunity"), failed. Instead, the new Convention adopted a resolution that member states can develop national legislation to exempt salvors from liability "unless the liability in questions resulted from their personal act or omission."

Please feel free to contact us regarding any inquiries and/or comments relating to this article.

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Footnote:

1. This resolution is aimed mainly to protect Salvors and was written in at their insistence when the delegates refused to grant Salvors immunity in the Convention, as had been demanded by Salvors' interests. However, national legislation can grant immunity and/or limited liability to any party taking measures to prevent or minimize the effects of bunker pollution as such nation deems fit, consistent with the mandates of the Convention, if such country becomes a signatory thereto.