
INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE (BUNKER CONVENTION): A STUDY ON ITS ROLE, EFFECT AND CHALLENGES

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ABSTRACT

The International Convention on Civil Liability for Bunker Oil Pollution Damage, commonly known as the Bunker Convention, was adopted in 2001 to regulate liability and compensation for oil pollution caused by spills of Bunker oil from vessels. Since its enforcement in 2011, the Convention has been pivotal in enhancing maritime safety, environmental protection, and economic sustainability globally. This study examines the Convention's objectives, its impact on the maritime industry, and the challenges it faces in effectively addressing bunker oil pollution. Key challenges include the absence of a responder immunity provision, discrepancies with the Civil Liability Convention, reliance on external liability regimes, limited scope excluding high-seas incidents, and inconsistencies in definitions and limitations. Addressing these challenges collectively through collaboration among member nations, stakeholders, and industry players is essential to strengthen the Convention's effectiveness in mitigating bunker oil pollution and upholding its mission for sustainable maritime practices and environmental preservation.

Keywords: Bunker Convention, LLMC, Shipping, CLC, Oil pollution.

INTRODUCTION

Oil spillage in the ocean is a very serious harm to the marine environment and it creates a lot of loss to the land as well. The most famous Torrey Canyon incident of 1967 shook the world and showed the huge intensity of damage that can be caused by oil spills. From that year onwards the international community has been proactive in coming out with regulations to prevent and protect from the devastation of oil spills. Oil spillage can happen from bulk carriers or tankers carrying the oil. The civil liability for oil pollution from tankers or bulk oil-carrying vessels is regulated by the International Convention on Civil Liability for Oil Pollution Damage, 1969. But in this convention, pollution due to bunker fuel from non-tankers or non-bulk carriers was not included which can also create the same issues. Thus, the International Convention on Civil Liability for Bunker Oil Pollution Damage was adopted on 23rd March 2001 to regulate the civil liability caused by bunker spillage from vessels. It actually came into force on 31st May 2011.¹ As of now, 100 countries have ratified this convention.² This convention was the right step in the direction of minimizing marine pollution due to oil spillages from vessels and providing provisions to hold those who commit these actions accountable.

BUNKER CONVENTION ROLE AND OBJECTIVE

The Bunker Convention, formally recognized as the International Convention on Civil Liability for Bunker Oil Pollution Damage, stands as a landmark international treaty crafted to address the multifaceted challenges posed by oil pollution caused by ships' bunkers. The main motive behind such treaties is safeguarding marine ecosystems, coastal communities, and economic interests worldwide. This convention is formulated with the help of the International Maritime Organization (IMO), to mitigate the adverse impacts of marine pollution. Because oil pollution is a very concerning issue.³ It can create a huge loss not only to the marine ecosystem but also to the economy of that country as it can completely destroy the coastline and any living beings like fish attached to it.⁴

¹ [https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Civil-Liability-for-Bunker-Oil-Pollution-Damage-\(BUNKER\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Civil-Liability-for-Bunker-Oil-Pollution-Damage-(BUNKER).aspx) (Mar. 03, 2024, 10:48 PM)

² <https://www.ecolex.org/details/international-convention-on-civil-liability-for-bunker-oil-pollution-damage-2001-tre-001377/participants/> (Mar. 03, 2024, 10:45 PM)

³ Chao Wu, Liability and Compensation for Bunker Pollution, 33 J. MAR. L. & COM. 553 (2002).

⁴ Abd Al Hamid naderi; Fereydon Shafiee Karaji. "Implementation of International Convention on Civil Liability for Bunker Oil Pollution Damage (BUNKER) to Waters of Bushehr Province". Journal of Maritime Transport Industry, 5, 1, 2019, 78-83. doi: 10.30474/jmti.2019.90198

Central to the convention's mandate is the principle of strict liability, a cornerstone of its liability regime. By imposing absolute responsibility on shipowners for pollution damages arising from bunker oil spills, irrespective of fault, the convention invokes a culture of accountability within the maritime industry. This regime ensures that those who profit from maritime commerce also bear the financial burden of mitigating its negative actions, creating a strong relationship between economic interests and environmental preservation.⁵ Moreover, the Bunker Convention establishes a framework for compulsory insurance or financial security to cover liability for bunker oil pollution damages.⁶ This requirement serves as a shield against the potential insolvency of shipowners in the aftermath of pollution incidents, thereby safeguarding funds for quick or adequate compensation to affected parties.⁷ By mandating this financial preparedness, the convention provides confidence in the global shipping sector's capacity to respond effectively to environmental emergencies, enhancing overall resilience and risk management practices.

Furthermore, the Bunker Convention outlines procedures for claims submission and adjudication, establishing clear guidelines and timelines to streamline the compensation process.⁸ By delineating the roles and responsibilities of competent authorities within signatory states, the convention fosters international cooperation and coordination, facilitating seamless communication and collaboration in the aftermath of pollution incidents.⁹ This harmonized approach not only expedites the resolution of claims but also cultivates a sense of trust and transparency among stakeholders, building confidence in the convention's efficacy as a mechanism for dispute resolution and redress.

That said, the convention has many positive side and negative sides where it has created some loopholes. The author will highlight some of the positive aspects, then the negative aspects or the challenges of the convention.

⁵ Zhu, L. The bunkers convention and limitation of liability. *Aegean Rev Law Sea* 1, 181–190 (2011).

⁶ Article 7 of Bunker Convention, 2001.

⁷ Ling Zhu, Can the Bunkers Convention Ensure Adequate Compensation for Pollution Victims, 40 *J. MAR. L. & COM.* 203 (2009).

⁸ Article 8 & 9 of Bunker Convention, 2001.

⁹ Springer, Dordrecht, Bunker Oil Convention, Bunker Convention. In: *International Documents on Environmental Liability*, (2008).

POSITIVE ASPECTS

There are a lot of positive factors in this convention which shows how much thought has gone into the drafting of the convention. This will highlight its role and objective. First of all, the definition of pollution damage includes the escape or discharge of bunker oil from the ship¹⁰. This is important because the inclusion of the words escape and discharge means the liability will arise even if the spill was due to their fault or not. Here the shipowner cannot escape from liability even after all the due diligence he takes. The unintentional or accidental escape of the bunker oil is enough to invoke the definition of pollution damage under this convention. This constitutes strict liability on the shipowners. Here it is not absolute liability as there are some exceptions given where if damage arose due to a third party or government or due to war-like situations shipowner is exempted from liability.¹¹ But in all other situations, he will be liable.

The convention has an elaborative definition of a shipowner. It includes “registered owner, bareboat charterer, manager and operator of the ship”.¹² This broad spectrum is important because often the shipowner is not the person responsible for the operation and activities of the vessel. In the shipping industry, it is quite often the ship is given to someone else for a very long period of time for business as is the case in bareboat chartering. There the charterer is responsible for the operation of the ship. It would not be fair for the ship owner to be liable in that scenario. Similarly, when the operation is handed over to managers or other operators the notion that the shipowner will be liable for everything is fortunately not followed here.

Similarly, the definition of bunker oil is also very wide. It says “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.”¹³ Here we can see all sorts of hydrocarbon mineral oil is covered. The Civil Liability Convention only talks about persistent oil but here there is no such distinction. It can be in use or even intended to be used.¹⁴

Often huge penalties are attached to marine environment pollution. This convention also talks about the liability of the shipowners. It will be a heavy financial burden for the shipowners as

¹⁰ Article 1(9) of Bunker Convention, 2001.

¹¹ Article 3 of Bunker Convention, 2001.

¹² Article 1(3) of Bunker Convention, 2001.

¹³ Article 1(5) of Bunker Convention, 2001.

¹⁴ Soyer, B., & Tettenborn, A. (Eds.). *Pollution at Sea: Law and Liability* (1st ed.). Informa Law from Routledge. (2012). <https://doi.org/10.4324/9781315874340>

we know the vessels are voyaging in harsh weather conditions and there is always a high chance of accidents and spillage. The compulsory insurance regime provided in the convention will act as a safety net for the shipowners. The flag state has to ensure its vessels of over 1000 gross tonnage have insurance certificates for them to operate. This will be very helpful because even though they are burdening the shipowners with heavy liability at the same time the compulsory insurance policy will save many shipowners from getting into bankruptcy. This not only helps the shipowner but will also help third parties as now they can directly sue the insurance company and make sure they get their compensation.¹⁵ Otherwise, if the shipowner had gone bankrupt these third parties would have suffered heavy losses without any remedy.

CHALLENGES

Even though the convention tries to address many issues it still fails to identify certain areas where the attention was needed. If some of the challenges and problems mentioned below were also identified it would have been a very complete system. Right now, the convention is incomplete and has left some open areas where the core issue still lies.¹⁶ First of all, even though rectified it is worth noting that the convention didn't have a responder immunity provision. The individuals responsible for mitigating or minimizing the impacts of bunker oil pollution lacked any form of protection. If such an immunity is not there then people will not come forward to do the pollution mitigation service. He should also get some kind of protection or exemption from liability. Nevertheless, later a resolution was brought to protect these people unless they caused the damage.¹⁷

Second, the Bunker Convention doesn't include the type of damage given in the Civil Liability Convention. The Civil Liability Convention only applies to vessels carrying oil in bulk¹⁸ and Bunker Convention applies to all other seagoing vessels. Therefore, even if a country follows the Bunker Convention but not the Civil Liability Convention a significant bunker oil spill from a full tanker wouldn't be covered by the Bunker Convention, even if the country involved is part of the Bunker Convention but not the Civil Liability Convention.

¹⁵ Norman A. Martínez Gutiérrez, *The Bunkers Convention 2001: Challenges For Its Implementation*, Paper presented at the round-table 'EU Maritime Policy and the (Northern) Adriatic' organized by the Maritime Law Association of Slovenia (MLAS) Portorož, Slovenia 20 May 2011

¹⁶ Tsimplis MN. *The Bunker Pollution Convention 2001: completing and harmonizing the liability regime for oil pollution from ships?* *Lloyd's Maritime & Commercial Law Quarterly*. 2005;(pt.1):83-100.

¹⁷ <https://imli.org/wp-content/uploads/2021/03/LAURETTA-CAROLINE-NAFULA-WAKOLI.pdf>, pg 12.

¹⁸ Article 1 (1) of CLC

Another challenge is that the convention says the limit of liability will be as per the application of national or international regimes like the LLMC Convention (as amended). So, if a country has not ratified LLMC they will have unlimited liability.¹⁹ The convention should have brought its own limit of liability regime. Even then, another problem arises that the LLMC Convention doesn't explicitly talk about pollution damage. Therefore, state parties have to keep this in mind while making new legislation.²⁰

The scope of the Bunker Convention only applies to damages affecting to state territories including the territorial sea and exclusive economic zone. It does not apply to high seas. This might be because the High Seas are not part of any country's territory, it comes under the common heritage of mankind.²¹ But still what if a huge spill occurs and a lot of marine life is damaged in the high seas? This is a problem for all the marine pollution liability conventions which are also present here.

Next at first glance, the definition of "ship" in the Bunkers Convention might seem like an attempt by the drafters to broaden the convention's scope beyond traditional interpretations. However, viewed from the perspective of insurers, it presents a significant liability gap within the convention. The drafters inadvertently created an issue for Protection and Indemnity (P&I) Clubs and their members, who operate offshore units. This problem arises because the definition of "ship" in the Bunkers Convention differs from that in the International Convention on Limitation of Liability for Maritime Claims (LLMC), which is the recommended limitation regime to be used alongside the Bunkers Convention. Consequently, while the Bunkers Convention acknowledges the right to limitation in Article 6 and its preamble, in practice, this right cannot be applied to offshore units due to inconsistency with the LLMC.²²

The Bunkers Convention lacks clear guidance on how joint and several liability of multiple defendants should be implemented. This absence of specific provisions means that the outcome hinges entirely on the choice of liable parties made by the claimants.²³ However, if the action targets several defendants simultaneously, it introduces another complication like how to

¹⁹ Norman A. Martinez Gutierrez, *The Bunkers Convention and the Shipowner's Right to Limit Liability*, 43 J. MAR. L. & COM. 235 (2012).

²⁰ Zhu, L. *Compensation issues under the Bunkers Convention*. WMU J Marit Affairs 7, 303–316 (2008)

²¹ Article 89 of UNCLOS, 1982.

²² Viktoria Jermolajeva, *The Bunkers Convention – Selected aspects of the liability and compensation regime for bunkers pollution damage*, Master thesis, Faculty Of Law Lund University (2010)

²³ *Ibid*

distribute liability among them and determine each party's share of compensation. Since the Bunkers Convention doesn't explicitly specify whether the limitation rights of those falling under the shipowner definition are independent or joint, questions may arise regarding whether compensation can be demanded from each of them up to their respective applicable limits. In contrast, LLMC provides clarity on the matter. It states that a limitation fund established for one is considered to be applicable to all others liable. This means that recovering the same losses multiple times from each defendant isn't feasible. However, if national legislation governs the right to limitation, interpretations may differ, potentially impacting the prospects of receiving adequate compensation. In such cases, the issue could be viewed and addressed differently, possibly leading to increased chances of obtaining sufficient compensation.²⁴

Lastly, unlike the CLC Convention, there is no backup security system like the FUND Convention or the Supplementary Fund Convention that applies to the Bunker Convention to cover the compensation expense beyond the limit prescribed in the LLMC Convention. There could be an argument that oil as a bunker in vessels would be much less in amount compared to tankers carrying bulk loads of oil. But still, the fact that not two but three-tier compensation systems (FUND Convention and Supplementary FUND Convention) were introduced does indicate how expensive oil spill compensation can become. Furthermore, since all these conventions are connected applying those conventions to bunker convention as well would have truly completed the system.

CONCLUSION

In conclusion, the Bunker Convention, or the International Convention on Civil Liability for Bunker Oil Pollution Damage, stands as a pivotal international treaty designed to address the complex challenges posed by oil pollution stemming from ships' bunkers. Since its inception in 2001, the Convention has played a crucial role in promoting maritime safety, environmental protection, and economic sustainability on a global scale.

At its core, the objective of the Bunker Convention is to establish a comprehensive framework for addressing liability and compensation for oil pollution damage caused by spills of bunker oil. By imposing strict liability on shipowners and requiring them to maintain insurance or financial security, the Convention ensures that those responsible for pollution incidents bear

²⁴ Ibid

the financial burden of cleanup and compensation, regardless of fault. This not only incentivizes responsible behaviour within the maritime industry but also provides a safety net for those affected by oil pollution, including coastal communities, marine ecosystems, and economic stakeholders.

The Bunker Convention, while aiming to address various issues related to bunker oil pollution, faces several significant challenges that hinder its effectiveness. Firstly, the absence of a responder immunity provision initially left individuals involved in pollution mitigation vulnerable to legal repercussions, discouraging their participation in cleanup efforts. Although later resolutions provided some protection, this delay in addressing the issue highlighted a critical gap in the convention's coverage. Secondly, discrepancies between the Bunker Convention and the Civil Liability Convention result in situations where certain oil spill incidents, particularly those involving full tankers, may not be adequately addressed under the Bunker Convention, causing inconsistencies in liability coverage across maritime activities.

Furthermore, the convention's reliance on national or international regimes like the LLMC Convention for determining liability limits poses challenges, especially for countries that have not ratified such protocols, potentially leading to unlimited liability. Additionally, the Bunker Convention's limited scope, which excludes high-seas incidents, raises concerns regarding accountability for marine pollution in these areas, highlighting broader issues shared among marine pollution liability conventions. Moreover, inconsistencies in definitions and limitations within the convention create additional complications for insurers and stakeholders, further undermining its effectiveness in providing comprehensive liability coverage. Finally, not incorporating at least a two-tier compensation system can really harm the shipowners. Addressing these challenges is crucial for enhancing the convention's ability to mitigate and address bunker oil pollution effectively on a global scale.

In conclusion, although the Bunker Convention has made notable progress in advancing maritime safety and environmental preservation, it encounters several obstacles that demand collaboration among member nations, stakeholders, and industry players. Resolving these challenges collectively is essential for the Convention to effectively uphold its mission of ensuring liability and compensation for bunker oil pollution damage, safeguarding marine habitats, and fostering sustainable maritime practices for future generations.