

# Webinar n° 2: The international legal framework of oil spill preparedness and response

Liability and compensation for non-tanker spills (Bunkers, LLMC) and implementation into national law



## The Bunkers Convention - Overview

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- Adoption: 23 March 2001
- Entry into force: 21 November 2008
- 98 Contracting States representing 95.05% of world tonnage
- Objective: “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 ships’ bunkers”
- Last significant gap in the international regime for compensating victims of oil spills from ships

## The Bunkers Convention - Principles

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- Strict liability of shipowners and some others
- Limitation of liability
- Compulsory insurance
- Certificates
- Direct action against insurer

## The Bunkers Convention - Definitions – Art. 1

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- **Ship** (Art.1.1): Any seagoing vessel and seaborne craft, of any type whatsoever.
  - Broad definition covering a large number of floating objects as well as traditional ships.
  - However, the Convention will not apply unless the vessel in question is carrying “bunker oil”.
- **Shipowner** (Art. 1.3): the owner, including the registered owner, bareboat charterer, manager and operator of the ship

## Definitions – Art. 1

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- **Bunker oil** (Art. 1.5): hydrocarbon mineral oil, including lubricating oil used for the operation or propulsion of the ship, and any residues of such oil.
  - Broad definition, but the proof of intention of use would be required in order to make distinction between fuel and cargo oil



## Definitions

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- Pollution damage (Art. 1.9): loss or damage ... by contamination resulting for the escape or discharge of bunker oil”.  
Compensation for impairment of the environment “other than loss of profit from such impairment” is limited to the cost of reasonable measures of reinstatement.
  - Accords with the definition of pollution damage in CLC.

## Scope of application – Art. 2

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- to **pollution damage** caused:
  - in the territory, including the territorial sea, of a state party, and
  - in the exclusive economic zone of a state party;
- to preventive measures, wherever taken, to prevent or minimize such damage
- **Preventive measures** (Art. 1.7): Any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage.

## Liability of the shipowner (Art. 3)

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- **Strict liability:** no requirement for fault for the liability to arise: the shipowner at the time of the incident (which includes the range of persons listed in the definition) is liable (Art. 3.1)
- Defences to the shipowner: limited exemptions as in CLC (Art. 3.3)
- The shipowner may also be excused from liability where it is shown that the person who suffered the damage caused or contributed to it (Art. 3.4).



## Exclusions – Art. 4

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- Pollution damage covered by the CLC.
- Pollution from warships or ships on Government non-commercial service unless a State Party decides otherwise. On the other hand where State owned vessels are used for commercial purposes the Convention applies including the jurisdiction provisions of Article 9.

## Limitation of liability – Art. 6

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- The shipowner and the person providing insurance or other financial security have the **right to limit liability** under any applicable national or international regime, such as the **convention on limitation of liability for maritime claims, 1976**, as amended.
  - The Convention is accompanied by a Conference Resolution on Limitation of Liability 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.
- The issue of limitation is therefore to be resolved pursuant to the **national or international regime**, if any, which applies in the State concerned in respect of limitation of liability for maritime claims in general.

## The international regime – LLMC

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### 1976 LLMC Convention

- Adoption: 19 November 1976
- Entry into force: 1 December 1986
- 56 Contracting States

### 1996 LLMC Protocol (increased the 1976 limits)

- Adoption: 2 May 1996
- Entry into force: 13 May 2004
- 61 Contracting States
- 2012 Amendments to 1996 Protocol - resolution LEG.5(99)
  - Entry into force: 8 June 2015

## The international regime - LLMC

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- If the LLMC applies, the owner, charterer, manager and operator of the ship are entitled to limit their liability pursuant to the terms of that Convention.
- Article 6 of the LLMC Convention sets out the limits of liability calculated based on the tonnage of the relevant ship. These limits of liability were modified by Article 3 of the 1996 LLMC Protocol and a further increase to these limits was agreed by the IMO Legal Committee in 2012 (resolution LEG.5(99)), using the tacit acceptance procedure.

## LLMC 1976 vs. LLMC 1996, Liability for Claims

### Personal claims (physical injury)

Vessel tonnage	LLMC 1976	LLMC 1996	LLMC 1996 as amended
GT 2,000	1,038,000	2,000,000	3,020,000
GT 30,000	10,574,500	24,400,000	36,844,000
GT 100,000	25,584,000	60,400,000	91,204,000

## LLMC 1976 vs. LLMC 1996, Liability for Claims

### Other claims (physical damage)

Vessel tonnage	LLMC 1976	LLMC 1996	LLMC 1996 as amended
GT 2,000	417,000	1,000,000	1,510,000
GT 30,000	5,095,500	12,200,000	18,422,000
GT 100,000	12,583,500	30,200,000	45,602,000

## Compulsory insurance and Direct action against the insurer

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- Which ships must be insured? Art. 7.1
  - Ships greater than 1,000 gross tonnage
- Who must be insured?
  - The **registered owner** of a ship having a gross tonnage greater than 1000 registered in a state party is required to maintain insurance (or other financial security)
- Level of insurance cover?
  - to cover the liability for pollution damage in an amount equal to the limits of liability under the applicable national or international limitation regime,
  - but not exceeding an amount calculated in accordance with the convention on limitation of liability for maritime claims, 1976, as amended.

## Insurance certificates – Art. 7

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### Evidence of insurance:

- A certificate attesting that insurance is in force shall be issued to **each ship** after the **appropriate authority** of a State Party **determines** that the requirements of the Convention have been complied with
  - A “Bunker Convention blue card” is issued by an insurer evidencing that there is in place insurance meeting the liability requirements of the Bunkers Convention. A “Bunker Convention certificate” is issued by a State party attesting that such insurance is in force
- With respect to a ship registered in a State party such certificate shall be issued or certified by the appropriate authority of the State of the ship’s registry
- With respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party
- A State Party may authorise another institution or organisation (RO) to issue the certificates



## Insurance certificates – Art. 7

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- The certificate has to be carried on board at all and a copy shall be deposited with the authorities
- The State of the ship's registry shall determine the conditions of issue and validity of the certificate
- Information on the financial situation of providers of insurance may be obtained from other States
- Certificates issued or certified under the authority of a State party shall be accepted by other states parties
- The Article also provides for the holding of certificates in electronic format.

## Direct action – Art. 7.10

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- Any claim for compensation for pollution damage may be brought **directly against the insurer**
- The defendant may invoke the defences which the shipowner would have been entitled to invoke, including limitation

## Consequences if no insurance is in place – Art. 7.11-7.12

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- A State party **shall not permit** a ship under its flag to operate at any time, unless a certificate has been issued
- Each State party shall ensure, under its national law, that insurance or other security is in force in respect of any ship having a gross tonnage greater than 1000, wherever registered, entering or leaving a port in its territory, or arriving at or leaving an offshore facility in its territorial sea

## Time limits and jurisdiction - Art. 8 and 9

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- The action should be brought **within three years from the date when the damage occurred**
- In no case shall an action be brought more than **six years** from the date of the incident which caused the damage
- 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.

## Implementation of the Bunker Convention

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- Verification of insurers
  - Problem faced by Administrations when issuing certificates under the Bunkers Convention to assess the solvency of some of the insurers or guarantors.
  - Guidelines for accepting insurance companies, financial security providers and the international group of protection and indemnity associations (P & I Clubs) (see CL No.3464 of 2014)

## Implementation of conventions into the national legislation

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- Pacta Sunt Servanda (art. 26 of the Vienna Convention on the Law of Treaties): Every treaty in force is binding upon the parties to it and must be performed by them in good faith.
- Read and understand the Convention, what is the purpose, what does it cover, when does this come into effect internationally/nationally
  - Art. 14 of the Bunkers Convention: For any State which ratifies, accepts, approves or accedes to it after the conditions in paragraph 1 for entry into force have been met, this Convention shall enter into force **three months** after the date of deposit by such State of the appropriate instrument
  - Art. 12 of the Bunkers Convention: Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention .... shall be deemed to apply to this Convention **as modified by the amendment**

## Implementation of conventions into the national legislation

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- Get a clear picture of your own national legal and legislative system
- What needs to be transposed - new convention or amendments?
- Important to publicize the text of the Convention and of the amendments
- Is relevant domestic law already in force? Can it be amended or is a recast of existing legislation more appropriate?
- What are the options for transposition? Primary or secondary legislation?
- Timetable: create a timetable early on (**before acceding**)
- Transposition table – compare **convention obligations** and **domestic implementation**
- **Enforcement** table – setting out how each obligation is to be enforced

## Implementation of conventions into the national legislation

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- Definitions and objective – Primary legislation
- Scope of application – Primary legislation
- Principles: responsibility of the shipowner, limitation of the responsibility, insurance, jurisdiction of national courts – Primary legislation
- Administrative details concerning issuing and checking of certificates by the Administration **with accompanying offences** – Primary or secondary legislation?
- Ensure that courts have jurisdiction to hear claims and there is a clear guidance on where claims for compensation may be taken
- Recognize the final judgments from courts in other State parties in respect of convention claims



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THANK YOU FOR YOUR ATTENTION!