



Måns Jacobsson
Former Director,
International Oil Pollution
Compensation Funds

Bunkers Convention
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Bunker spills

- Major spills do happen
 - *New Carissa*, Oregon, USA, 1990
 - *Amorgos*, Taiwan, 2001
 - *Selendang Ayu*, Bering strait, 2004
 - *Caso Busan*, San Francisco, 2007
 - *Fedra*, Gibraltar, 2008
 - *Full City*, Norway, 2009
 - *Pacific Adventurer*, Queensland, Australia, 2009
 - *Rena*, New Zealand, 2011
 - *Golden Trader*, Denmark/Sweden, 2011
 - *Octbreeze Island*, Argentina, 2014
 - *Flinterstar*, Belgium, 2015
 - *Le Bouchon*, Mauritius, 2016
 - *City*, Japan, 2016
 - *Taipei*, Taiwan, 2016
 - *CSL Virginia*, Mediterranean, 2018
 - *Grande American* (Bay of Biscay, March 2019)

Bunkers Convention

- Adopted 2001
- In force 2008
- 93 States parties

Bunkers Convention Applies to

- Pollution damage
 - caused by spills of bunker oil from ships other than oil tankers
 - in the territory, territorial sea and EEZ or equivalent area of State Party
- Pollution damage includes costs of preventive measures and further loss of damage caused by such measures

Bunkers Convention Applies to

- Bunker oil means
 - any hydrocarbon mineral oil
 - used or intended to be used for the operation or propulsion of the ship
 - and any residues of such oil.

Excluded from Scope of Application

- Pollution damage as defined in the 1992 Civil Liability Convention, whether or not compensation is payable under that Convention
- Surprising consequences of this exclusion
 - Spill of bunker oil from a laden tanker causing pollution damage in a State not party to 1969 or 1992 CLC but party to Bunkers Convention
 - neither of these Conventions apply
 - Spill of bunker oil from an unladen tanker with residues of persistent oil cargo from previous voyage on board causes pollution damage in State party to both 1969 CLC (but not 1992 CLC) and the Bunkers Convention
 - neither of these Conventions apply

Main Features of the Bunkers Convention

- Strict liability of shipowner
- No special regime for limitation of liability
- No channelling of liability as in the CLC /HNS Convention
- Compulsory insurance and direct action
 - for ships over 1 000 GT

More than one person liable

- Shipowner means owner (including the registered owner), bareboat charterer, manager and operator of ship
- Liability of these persons joint and several
- No provisions on distribution of liability between the persons liable

Limitation of liability

- Shipowner (as defined) entitled to limit liability under either
 - applicable national law, or
 - international regime such as the 1976 LLMC as amended
- No separate free-standing limitation amount
 - Claims under Bunkers Convention have to compete with other claims
- Under LLMC claims for personal injury and death have priority with respect to two thirds of limitation amount

Loss of right to limitation

- Limitation lost under LLMC if pollution damage resulted from shipowner's personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result
 - How to apply this provision when there are several parties liable?

Linkage to LLMC; problems

- General intention at 2001 Diplomatic Conference that all bunker oil pollution claims be limitable under LLMC
- LLMC does not refer to pollution claims
- Limitation allowed under LLMC art. 2.1(d) and (e) for claims in respect of
 - the raising, removal, destruction, or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such a ship
 - the removal, destruction or the rendering harmless of the cargo of the ship
- Wide enough to cover bunker pollution clean-up costs
- Uncertain whether applies to pure economic loss claims

Linkage to LLMC; problems

- LLMC gives States the right to opt out of art. 2.1(d) and (e)
 - Norway, United Kingdom and some other States have done so
- United Kingdom Merchant Shipping Act:
 - Claims for bunker oil pollution to be treated as claims for property damage limitable under LLMC
- *Full City* incident (Norway, 2009)
 - Norwegian Maritime Code
 - bunker clean-up costs to be treated as wreck removal costs
 - separate significantly higher limit

Shipowner Exemptions from Liability

- Same defences as in the 1992 CLC
 - Damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character, or
 - Damage was wholly caused intentionally by a third party, or
 - Damage was wholly caused by negligence of public authorities in maintaining navigational aids

Only One Compensation Layer

- No Fund back up

Channelling under the Bunkers Convention

- No channelling provisions in the Bunkers Convention
 - Except that no claims allowed against the shipowner (as defined) outside the Convention
- Consequences
 - No protection for servants or agents or members of the crew
 - No protection for persons engaged in salvage and clean-up
- Diplomatic Conference Resolution on channelling

Compulsory insurance under Bunkers Convention

- Insurance covering limitation amount (whatever it is)
 - not exceeding LLMC limit
- Insurance required for ships over 1 000 GT
- A State may exclude from insurance requirement ships operating exclusively within its territorial sea
- Direct action against insurer (as under 1992 CLC)
 - Insurer may not invoke defences under policy
 - Insurer may invoke defence of shipowner's wilful misconduct

Verification of solvency of insurer

- IMO Legal Committee Guidelines: recommendation that States should
 - accept documentation from International Group Clubs
 - they should, when receiving documentation from insurers or providers outside the International Group, verify the financial standing and solvency of such insurers or providers.
- Recommendation originally for Bunkers Convention only; later extended to CLC and HNS Convention.

Insurance certificates issues

- Number of ships involved
 - CLC 4 000 oil tankers
 - Bunkers Convention 40 000 ships
- Ships should carry on board insurance certificate issued by competent authority of flag State
- Certificate requirement only for ships above 1 000 GT
- States allowed to maintain certificates in electronic form
 - No such provisions in the CLC and HNS Convention
- Issuance of certificate may be delegated to institution/organisation
 - No such provisions in the CLC and HNS Convention (but allowed pursuant to Assembly Resolution in December 2017)

Insurance certificates issues

- IMO Assembly Resolution: Bunkers Convention certificates required for oil tankers
- Certificates for bareboat chartered ships
 - IMO Assembly Resolution: States parties recognise that certificates for ships under bareboat charter should be issued by the flag State (if that State is party to Convention)
- Certificates required for Mobile Offshore Drilling Units (MODUs)
 - LLMC does not apply to MODUs

Compulsory insurance – acts of terrorism

- P&I Clubs certify that cover is in place for Bunkers Convention (and CLC) liabilities for acts of terrorism (although not covered by P&I insurance)
 - provided shipowner has standard war risks insurance cover

Time bar (same as 1992 CLC)

- 3 years from date of damage
- In any event, 6 years from date of incident
- Not prescription in the normal sense, but extinction of rights

Jurisdiction and Enforcement of Judgements (same as 1992 CLC)

- Courts in the State where damage occurred have exclusive jurisdiction
- Judgements rendered by courts competent under the Bunkers Convention to be recognised and enforced in all States Parties, except
 - if due process not respected
 - if judgement obtained by fraud

Jurisdiction and enforcement of judgements

- Exclusive EU competence
- EU law based on Regulation 44/2001/EC (adopted December 2000), replaced by Regulation 1215/2012/EU
 - exception for older "treaties"
- 2001 Bunkers Convention "younger treaty", so not excluded from Regulation
- EU Council decision authorising Member States to ratify "in the interest of the Community"
- EU Member States required to make a declaration on ratification that they will apply EU law on this subject

Types of Damage covered

- Same as under the 1992 CLC

Definition of ship; 1992 CLC – Bunkers Convention

1992 CLC (art.I.1): any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage **unless it is proved that it has no residues of such carriage of oil in bulk as cargo.**

Bunkers Convention (art. 1.1): any seagoing vessel or seaborne craft, of any type whatsoever.

Definition of ship; 1992 CLC – Bunkers Convention

***Bow Jubail* incident, Netherlands, 2018**

oil and chemical tanker in ballast

23196 GRT

collided with a jetty at an oil terminal in Rotterdam

bunkers (heavy fuel oil) leaked (217 tonnes) and caused pollution

Question: 1992 CLC or Bunkers Convention applicable?

Limitation amount CLC/Fund regime

1992 CLC: SDR 15 991 676

1992 CLC + STOPIA: SDR 20 million

1992 Fund Convention; SDR 203 million

Supplementary Fund Protocol: SDR 750 million

Limitation amount LLMC/Bunkers Convention

SDR 14 312 384

Bunkers Convention vs. Directive 2004/35/EC on environmental liability

- Directive covers
 - certain types of environmental damage
 - preventive measures and remedial measures
- Exclusion for environmental damage resulting from an incident in respect of which liability or compensation falls within the scope of the following treaties (to the extent in force for the EU Member State concerned)
 - 1992 CLC
 - **Bunkers Convention**
 - HNS Convention

Assessment of the Bunkers Convention

- Weaknesses
 - Result of compromises
 - Link of limitation to LLMC
 - Several persons liable
 - No channelling provisions
 - One layer compensation regime only
- Nevertheless, reasonable solutions to most major issues

Nairobi Wreck Removal Convention (entered into force in 2015, 44 States parties)

- Nairobi Convention applies to wrecks located beyond territorial waters but within the EEZ (or corresponding area) of a State party
 - States may extend the application to wrecks in their territorial waters
- Primary responsibility of the shipowner for the removal of hazardous wrecks

Nairobi Wreck Removal Convention

- Shipowner has strict liability for the costs of locating, marking and removing hazardous wrecks;
 - liability to be covered by insurance
- Shipowner's liability includes costs of removing oil remaining in the wreck or having been spilled from the sunken or stranded ship
- Shipowner may limit his liability in accordance with national law or applicable international Convention

Possible conflicts between Nairobi Convention and maritime liability conventions

- Removal of a sunken tanker with oil remaining on board or of spilt oil may constitute preventive measures for the purpose of CLC/Bunkers Convention/HNS Convention
- No liability under the Nairobi Convention if this would result in a conflict with the CLC, Bunkers Convention or HNS Convention
 - i.e. Nairobi Convention not applicable if the damage or the measures fall within the relevant definitions in these Conventions
 - provided the relevant Convention is in force for the State concerned

