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“Dharma is to protect the Needy”

Research Article on

**“BUNKER: INTERNATIONAL CONVENTION ON CIVIL
LIABILITY FOR BUNKER OIL POLLUTION DAMAGE, 2001”**

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ABSTRACT

“The Bunker Convention came into force in the year 2001 after the very famous Erika incident.

The Bunker Convention deals with the liability arising out of the Bunker oil (oil spills from Ships)¹. The research paper is focused on the Bunker Convention, its effect and relations with other conventions and also the loopholes and certain questions arising out of the analysis done regarding implementation of the Bunker Convention. The Research paper will highlight the background of the Bunker Convention and the already enforced convention before this convention. The Bunker Convention has resulted in the establishment of an International regime for compensation with respect to oil spill by the Ships and thus the liability and jurisdiction covered by the Convention is analyzed as well. Further, the research is limited to its analysis and its application internationally.”

I.INTRODUCTION

The Bunker Convention was proposed by Australia in 1994, which was taken into consideration by the UN after the *Erika* Incident which left the UN in a state where there were questions regarding the regime of oil spill compensation. There were regimes for compensation through various conventions namely:

1. Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC 1969).
2. International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971(FUND 1971).
3. Protocol of 1992 (CLC 1992).
4. Protocol of 1992 (FUND 1992).
5. The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substance bySea, 1996 (HNS 1996).

¹Article 1OfInternational Convention on Civil Liability for Bunker Oil Pollution Damage, 2001

Definitions

For the purposes of this Convention:

1. "Ship" means any seagoing vessel and seaborne craft, of any type whatsoever.
5. "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.

These conventions created a regime for compensation for the pollution caused by harmful and noxious substances. However, there were no regimes to compensate for the pollution caused by the Oil Spills, especially the Bunkers. Thus, a convention was required to calculate and levy liability of the pollutant. IMO statistics were clearly showing that the Oil spills from non-oil tankers compared to oil tankers are likely to pollute the environment in a far worse manner i.e., cargo oil on oil tankers is less harmful than the bunker oil on non-oil tankers.

The Bunker Convention came in force in the year 2001. The Convention was aimed at reducing the pollution that was caused by the ships, which is most harmful to the marine environment. The Convention solved the problem of the international regime for compensation of bunker oil, liability, and insurance related to Ships. The Part XII of UNCLOS particularly deals in protecting marine environments and also helps to regulate substantive and domestic laws with respect to international guidelines.

The Marine environment is under the protection of various conventions. One such convention is BUNKER: International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunker Convention). This convention covers the civil liability arising out of the damage caused by the spills of oil by the ship's bunker. Not only the marine environment but any state territory, exclusive economic zone or any other territorial sea. The Bunker Convention is based on the Civil Liability for Oil Pollution Damage, 1992, which is the existing International Convention for compensation from oil pollution by tankers. The Bunker Convention came into force from the year 2008 and India has signed the convention in the year 2015. Under this convention there is a strict liability against the Ship owner for the pollution caused by the oil spilled by the Ship's engine i.e., Bunker oil.

The Bunker Convention imposing a strict liability on ship owners cannot totally succeed as it imposes a liability on the owner of the Ship however the right of the ship owner cannot be restricted as the Ship Owner can limit his liability under the Convention on Limitation of Liability for Maritime Claims, 1976. Also, before the Bunker Convention came into force, the liability which can be imposed was confined to spill from the tanker and not all the vessels going in sea as per the International Convention on Civil Liability for Oil Pollution Damage, 1992, which is covered by the Bunker Convention. Further, it includes all types of oils carried by the ships and liability of the same shall be imposed to all the ship members jointly or separately. The Ship owner

needs to maintain an insurance of the Ship and the definition of Ship owner is broader so as to cover the case where more than a single party is responsible.

II. RESEARCH QUESTIONS

- i. If one of the state parties is bound by this convention and another is not, then, how will the liability be decided?
- ii. What are the conventions that can overpower this convention in particular?
- iii. Why was there a need to create this convention while similar other conventions are in force?

III. RESEARCH METHODOLOGY

The research methodology adopted for this project is secondary and the research will be done using research papers, journals, Articles, books, case laws and other materials available on the given topic.

IV. SCOPE AND RELATIONSHIP

The Bunker Convention and Civil Liability Convention are mutually exclusive and cover different areas regarding liability arising out of pollution caused to the environment. The CLC covers the oil pollution caused by the tanker oil spill or cargo while the Bunker Convention specifically targets the oil spilled from the Ships. Thus, both cover the liabilities of exclusive economic zones of the contracting party (country). But, the question arises from the fact where both the conventions lack in covering the liability of any state. This is in the following circumstances:

1. When the oil spill is from a Ship (tanker) defined by CLC 92 where even if the CLC 92 is not applicable, the Bunker Convention will also be not applicable as the definition is covered by some different convention.
2. Where a third party has caused pollution through acting or omitting something.
3. When there is a war going on and the oil spill is caused due to some act in such a state.

4. If the oil spill is due to negligence of the government or any authority responsible for maintenance of lights or other navigational systems.²

So, it is clear that the CLC92 and Bunker Convention are applicable in different circumstances and both lay out the ways not to overlap each other and in that process, both conventions are having loopholes, the liability of which is not covered by any state so far.

The Convention also follows the compulsory insurance formula and the question again arises as to which ships should have the compulsory insurance i.e., whether the fewer ships with vulnerable coastlines or the large number of ships flying their state's flag? The answer has been given by the Convention by applying the compulsory insurance to only those ships having more than 1000 gross tonnage.

V. LIABILITY

The liability is not to be determined as such and that has been already given that the strict liability is levied on the ship owner and the pollution caused by the ship is to be covered by the Ship owner. Thus, there is no burden of proving that the Ship owner is liable for the harm. Yet as stated earlier the Ship owner may get exemption from such liability if the oil spilled is due to a natural calamity or Act of God. Under Article 1 Clause 3 "Shipowner" means the owner, including the registered owner, bareboat charterer, manager and operator of the ship. Through Bunker Convention the approach is such that the Ship Owner as defined above can be made liable jointly as well, since, the approach is adopted from US Law, which can hold persons jointly liable. The Problem is not solved by this liability clause, as there is no provision regarding more than insurance covers. For other conventions there is channeling that helps to resolve the problem suit against agents, damage operators and servants of the Ship and protects them as well which is major shortcoming of the Bunker Convention. Even Cleanup contractors and Salvors get protection under such pollution conventions and the immunity enjoyed by them against any kind of suit is known as 'Responder immunity' which is not provided by the Bunker Convention.

However, the Convention gives the freedom to limit the liability under the domestic laws of the country. For example the US can mold its liability to an extent as they have such regulating

²Article 4 Of *International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001*

policy i.e., U.S. Oil Pollution Act 1990 (OPA 90). The other countries who are party to the Bunker Convention such as China have unlimited liability because they have no such law regarding oil spill by bunker. This leaves the parties uncertain about the economic and financial risk they may face because of all such regulations. Also, the result of which would be difficulty in calculating the liability in financial aspects. The ambiguous position is yet not resolved and still persists as there is no control of Bunker convention in limiting the liability by the respective state. Further there is no bar on the claims dedicated to the bunker pollution fund which is absent i.e., there is no such fund present under the convention. Thus, the claim has to be differentiated with other claims under different regimes of other conventions. Deducting such a situation the possible remedy would have been creation of a limitation fund that may have resulted in a convenient way of obtaining funds for the claimants. The limitation fund should be created under the regimes of all the conventions so as to discontinue the financial problems arising due to overlapping of conventions.

The other method by which claimants can make the shipowner liable is through making a specific claim against the owner i.e., by initiating direct action against him (Ship owner). The jurisdiction regarding the liability also matters when the liability is to be determined which is clearly established by the convention.

VI. JURISDICTION

One of the main issues is regarding the jurisdiction when it comes to pollution control and what law should be applicable. Although through UNCLOS, every State shall Cooperate in minimizing marine pollution but, without necessary provision regulating the matter, the disputing parties would be unaware and not sure of what obligations and rights are existing with them. The Consequence of which results in 2 problems:

1. How to identify the person who is liable?
2. Deciding the Correct Jurisdiction applicable.

Limitation ceiling also affects the estimating power of the insurer and ship Owner to decide the financial risks with respect to different jurisdictions. Further, the freedom is provided under this convention to initiate proceedings by the state against the Ship Owner who has harmed marine environment and caused pollution.

VII. BENEFITS

The major benefit which the Bunker Convention has given to the International Maritime Organization is creation of an international regime for Bunker Oil pollution. This had never been enacted earlier through any other convention. Though the conventions related to each other through channeling enabled the claimants to get the damages to control the pollution and also to restore the maritime environment. But the incident which took place in series created the necessity of enabling the Bunker Convention.

The geographical application of the Bunker convention is applicable in the high seas and exclusive economic zone of the state party to this convention according to the international convention. The area is not just limited to the high seas which are under the territory of the states but the international regime is also enabled to deal with the geographical location outside the territories for minimizing the pollution caused and it has no limitation as per the provision of Article 2(b) of the Bunker Convention. The exception of Bunker Convention regarding the naval ships, Government non-commercial Purpose also stands to be irrelevant if the state allows the convention to be applied in oil spill cases.

VIII. CHALLENGES

The Bunker Convention has benefitted the International Maritime Organization in many ways and has filled the loopholes of many conventions yet it lacks certain essential features which has created problems for the Bunker Convention resulting in the Challenges:

- **LIABILITY OF PERSONS TO BE ASCERTAINED**

The liability of the persons is resolved by enabling the convention to make the persons jointly and severally liable but the amount of compensation to be taken from the persons held liable is still ambiguous. For Example there are 3 ships that have caused pollution and all are held jointly liable the question arises as to what amount of compensation has to be recovered from whom? And if the claimant claims from a particular Ship Owner then he has to seek recourse for recovering the amount that is to be paid by the other persons who were held liable. Furthermore, this shows that the regime even after establishment may not have adequate grounds to establish how much compensation is to be paid by whom.

- **STRICT LIABILITY**

The Bunker Convention imposes strict liability on the Ship Owner to pay the damages for pollution control and restoring the marine environment. However, the strict liability is not there since it has given freedom to the Ship Owner to restrict or limit its liability to an extent thus, creating a situation again where the compensation if falls inadequate the question to pay the remaining amount is not certain. The Victim state and the marine environment thus has no solution to the problem. Therefore the rules on limitation of liability has to be reformed

- **INSURANCE LIABILITY**

Claimants' direct Action against the Defendant (Party who has caused Pollution) is still leading to ambiguous situations when there is more than one insurance cover i.e., how to decide the amount of compensation to be levied on each insurer and how much it should be. Thus creating another backdrop to be looked upon.

- **RELATIONSHIP WITH OTHER LIABILITY REGIMES**

The problem with other liability regimes also persists as there is no compensation fund by this convention. If there is a situation where other conventions are overlapping the matter and the compensation under such convention is to be paid, the position of the convention is not clear regarding the amount to be paid under different liability regimes.

- **DEFINITION PROBLEMS**

The definitions under the convention leads to further problems as the party who has been facing pollution and harm to marine environment in its area due to oil spill by the Ship, they have no measure if the definition of 'Ship' is not satisfied under this convention then, it will not be covered by this Convention even if it is not covered by any other convention.

Further, the necessary immunity mentioned above which is to be provided to other people other than the Ship Owner i.e., to salvors, servants, damage operators and cleanup contractors, is not provided by this Convention. This is covered by other conventions like CLC 92, FUND and HNS.

By seeing all the issues faced by the Bunker Convention there is a need to resolve all the challenges faced by this convention through reforming the same. Nevertheless it has enabled many States to claim adequate compensation. Although, it has not looked upon the issues faced by

domestic laws of the Countries like China, yet, it is successful in solving problems on an international level to an extent.

A comparison of the Bunker Convention with the CLC

CLC plays a role in bunker spills from tankers subjected to it.³ The Bunker Convention would not apply in cases where the CLC applies, so there is no overlapping between the mentioned two and any vessel previously subject to the CLC would not be affected by the Bunker Convention.⁴ The Bunker Convention is applicable to any sea-going vessel and seaborne craft, of any kind whatsoever, which is shipping "bunker oil", defined as any hydrocarbon mineral oil, counting lubricating oil, used or planned to be used for the process or propulsion of the ship, and any remains of such oil.⁵ Unlike the CLC, the Bunker Convention is not restricted to importunate fuel oils and will pertain to any mineral oil used to function the ship, including lighter marine diesel.

The CLC channels all legal responsibility to the "registered owner". The Bunker Convention has a great deal of scope as it defines "ship owner" as "the registered owner, bareboat charterer, manager and worker of the ship". The purpose is to broaden the capability of liability counting scenarios where more than one party is liable. Each party is jointly and severally liable.⁶ Only the registered holder, however, is required to uphold the obligatory insurance. This broader approach with reverence to accountable parties is comparable to OPA 90.

Limitation rights of ship owners and insurers

The Bunker Convention, nothing like the CLC and OPA 90, does not itself enclose any provisions entitling a "ship owner" to boundary his liability. What it does say, however, is that if

³ CLC convention applies to persistent oil and only to tankers that carry "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 aboard."

⁴ See Bunker Convention Article 4.1.

⁵ See Bunker Convention Article 1.1, 1.5.

⁶ See Bunker Convention Article 3.2.

a “ship owner” has a right to limit his legal responsibility under the 1976 Convention on Limitation of Liability for Maritime Claims (LLMC), that boundary can be used in deference to claims made underneath the Bunker Convention. The Bunker Convention is a pedestal on strict liability and offers for immediate action alongside the insurer who nevertheless maintains the rights and defenses of the insured as well as a right to edge his own legal responsibility to the sum of the insurance certificate (the limit under the LLMC). This holds accurate even in circumstances where LLMC limitation is not reachable to the ship owner.

The convention offers that claims can only be brought in the situation where damage has occurred. This differs from the LLMC where the ship owner may position up a restriction fund in any jurisdiction in which proceedings under the LLMC have been started. In solitary event scenarios involving no public injury and property damage in addition to pollution from bunkers, the sum limitation for all claims will be set by the LLMC, if appropriate in the nation in question, so all types of claims will struggle for payment.

The LLMC limit is in two parts: a higher quantity for private injury and an inferior amount for belongings claims. For property claims, including bunkers spills, the tonnage limits are determined as follows:

Vessels of	2,000	GT	or	less	=	1,000,000	SDR
Each GT from	2,001	–	30,000	=	400	SDR	
Each GT from	30,001	–	70,000	=	300	SDR	

Each GT in excess of 70,000 = 200 SDR

For a vessel of 40,000 GT the limitation would be:
 $(1,000,000 \text{ SDR}) + (400 \text{ SDR} \times 28,000) + (300 \text{ SDR} \times 10,000) = 15,200,000 \text{ SDR}$
 15.2 million SDR = about 24 million USD.¹¹

For a vessel of 10,000 GT the limitation would be:
 $(1,000,000 \text{ SDR}) + (400 \text{ SDR} \times 8,000) = 4,200,000 \text{ SDR}$
 4.2 million SDR = about 6.65 million USD.

According to a discussion article equipped by the UK Department of Transport,⁷² in the occasion of a sufferer involving both individual injury and property damage due to a bunkers fall, if the

⁷ See also the article “[The new Bunker Convention](#)” in Gard News issue No. 165.

claims for demise or private injury go beyond the limit of liability recognized for those claims, then the quantity obtainable for possessions claims can be worn to provide extra compensation for thrashing of life or individual injury claims, although these claims will have to struggle with any other qualified claims. This is not due to the good quality of the bunkers convention, but rather the LLMC.

Compulsory insurance and certification

The Bunker Convention inflicts the requirement to place compulsory cover or monetary security on the registered owner of a vessel of further than 1000 GT.⁸ The liability provisions relate to vessels of less than 1000 GT, but these lesser vessels are not requisite to have cover.

The registered proprietor is requisite to attain the cover for pollution damage in a sum equivalent to the limits of legal responsibility under the appropriate national or global limitation command, but in all cases not beyond a sum calculated in agreement with the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.⁹

The cover provider is subject to straight action which is planned to do absent with “pay to be paid” supplies within P&I insurance.

Where a vessel is registered in a state party to the Bunker Convention, a State Certificate must be obtained from the suitable state power (for example, the UK would seem to MCA). Vessels registered in non-signatory states will need to obtain a certificate from a state that is a party.¹⁰

The certificate shall be in the outline of the representation set out in the convention’s annex and shall enclose the following particulars: (a) name of vessel, characteristic number or letters and the harbor of registry; (b) name and chief place of commerce of the registered owner; (c) IMO vessel identification number; (d) nature and period of security; (e) name and chief place of commerce of insurer or the other individual giving sanctuary and, where suitable, place of commerce where the insurer or sanctuary provider is recognized; (f) duration of validity of the

⁸ See Bunker Convention Article 7.1.

⁹ See Bunker Convention Article 7.2.

¹⁰ See Bunker Convention Article 7.2.

official document, which shall not be longer than the phase of soundness of the insurance or other sanctuary. The official document requires to be in English, French or Spanish, or the content should be translated into individual of these languages.⁹

The registered proprietor of vessel of more than 1000 gross tonnage, registered in a State Party, must therefore uphold enforced insurance or other monetary cover, such as the assurance of a bank or parallel monetary institution, casing its liability for fatalities caused by pollution in an quantity corresponding to the limits of liability laid down by the appropriate national or international restriction command, but not beyond in no case, an quantity calculated in agreement with the 1976 Convention on Limitation of legal responsibility for Maritime Claims, as amended.

Issuance of the Certificate of Insurance or Financial Guarantee

After the capable authority of a State Party has certified that the supplies of the Convention have been accomplished, an indemnity certificate shall be issued to each vessel, certifying that it has indemnity or other suitable monetary cover in accordance with the supplies of the Convention. In the case of vessels registered in a State Party, such certificates shall be issued or qualified by the capable authority of the position in which the vessel is registered. With admiration to vessels registered in a State that are not a Party to the Convention, the indemnity certificate may be issued or authorized by the capable authority of any State Party.

P&I cover

Subsequent consideration by the ruling bodies of a variety of members of the global Group of P&I Clubs (IG), it has been decided that the IG Clubs will subject the required Bunker Convention “Blue Cards” to allow signatory states to issue certificates from August 2008.

X. INDIAN SCENARIO

The Union Cabinet, headed by the Prime Minister Shri Narendra Modi, approved the Ministry of Shipping's suggestion for India's attainment to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunker Convention) of the International Maritime Organization (IMO) as well as to modify the Merchant Shipping Act, 1958 to give upshot to the Bunker Convention, Nairobi Convention and Salvage Convention.

The Bunker Convention ensures sufficient, prompt, and efficient reimbursement for harm caused by spills of oil, when conceded as fuel in ships' bunkers. The territorial jurisdictions for harm compensation expand to territorial sea and exclusive economic zones. It is applicable to an Indian vessel, wherever it is positioned, and to an overseas flag vessel while it is surrounded by Indian jurisdiction.

The registered proprietor of every vessel has to preserve compulsory indemnity cover which allows declaration for compensation for pollution damage to be brought unswervingly against an insurer.

Every vessel above one thousand gross tonnes has to take a certificate on plank to the consequence that it maintains cover or other monetary security, such as the assurance of a bank or similar monetary institution. In India, the Directorate General of Shipping shall concern that certificate and in overseas countries their own maritime authority will concern the certificate. No vessel will be allowable to enter or leave India devoid of such a certificate.

The legal responsibility cover for pollution damage shall be equivalent to the limits of liability under the appropriate national or international limitation regime, but in all belongings, not exceeding a quantity calculated in agreement with the Convention on Limitation of Liability for Maritime Claims, 1976. India is a party to Limitation of Liability for Maritime Claims convention and its necessities previously subsist in the Merchant Shipping Act and Rules there under.

The Bunker Convention 2001 is already in power globally since 21.11.2008 and maritime nations accounting for 91 percent of global shipping tonnage are Parties to the same Convention. If India does not turn out to be a party to Bunker Convention, Indian flag ships visiting overseas ports will have to carry on with the current dispensation of imminent overseas countries for

bunker insurance fulfillment certificates while overseas ships visiting Indian ports are not subjected to obligatory insurance.

The proposed amendments to the Merchant Shipping Act 1958, if enacted, shall also give up shot to the Nairobi Wreck Removal Convention and the Salvage Convention of IMO of which India is already a party. It will facilitate a more focused approach towards elimination of wrecks and salvage, defend Indian waters from the ruin hazards and initiate internationally documented and accepted rules for exclusion of wrecks.

Similarly, personal and public entities will be confident to contribute in salvage operations on explanation of sufficient remuneration for services rendered particularly to defend the situation or reduce its damage. Salvage services provided for securing life, cargo or destruction will be paid in precedence to other claims for retrieval. Salvage services provided by the administration shall also be permitted to rights and remedies as those of any additional salver. The Bill provides for duties of the salvor, proprietor and master of a vessel. It also provides for rights and duties of the fundamental Government in situations of maritime suffering in shielding its environment and coastline and to surpass directions with consideration to salvage operations. The disputes connecting to claims shall be determined by the High Courts. Action on imbursement for salvage shall quench if such claim is not completed within two years.



IX. CONCLUSION

It can be thus said that the Bunker Convention is based on the CLC and it covers the oil spills by the bunker which is aimed for adopting a broader approach to cover the pollution control in the maritime zone. The aim of the convention was to impose a strict liability on the ship owner, yet, there are many other conventions which enable the Ship owner to restrict the liability. Further, the Bunker convention is the most successful in unifying international law in relation to pollution liability and damages for the same. Also, the Bunker convention was a need for international law as the growing rate of transportation between the countries has increased the need to cover the oil spills or any pollution that may harm the marine environment.

With all such deductions it is important to summarize all the points that are necessary to be looked upon. The Bunker Convention covers various aspects which were to be looked upon.

But covering the old plots has created new drawbacks for many nations. There is a necessity to reform the law all in all. It needs stricter Articles and a less complex structure. The answers to several problems are still unanswered which can be only solved after getting into the depth of the issues. The issue regarding liability and funds to be created is an important point which should be considered by the drafting committee. Nevertheless it has benefitted the International law by eliminating the points that created problems for other conventions. Also, it has clearly established its boundaries i.e., it has deleted the overlapping power of other conventions partially.

The liability of the Ship Owner is Strict under this convention. The Conventions also enable filing a suit directly against the defendant if the defendant party is a State party to this Convention. It can be concluded that the Convention has Strict Laws with some necessary changes to be done to make it more approachable and easier to resolve the issues which can result in challenges to the Convention and International Law.



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