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### Overview

- Adoption: 23 March 2001
- Entry into force: 21 November 2008
- 107 Contracting States representing 95.04% 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
- Application: Applies to damage caused on the territory, including the territorial sea, and in the EEZ of States Parties.

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### Principles

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

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### Definitions – Art. 1

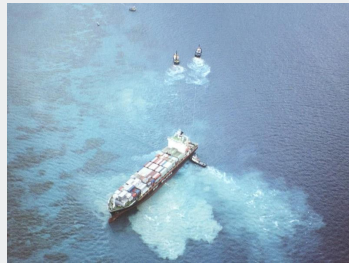
- **Ship** (Art. 1.1): Any seagoing vessel and seaborne craft, of any type whatsoever.
  - Broad definition covering a large number of floating objects as well as traditional ships.
  - However, the Convention will not apply unless the vessel in question is carrying “bunker oil”.
- **Shipowner** (Art.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

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### Definitions – Art. 1

- **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



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### Definitions

- **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.



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### Scope of application – Art. 2

- 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.

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### Liability of the shipowner (Art. 3)

- 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)
- Joint and several liability (Art. 3.2).
- 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).
- Immunity from other suit (Art. 3.5).
- However, shipowner's right of recourse (Art. 3.6)

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#### Exclusions – Art. 4

- 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.

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#### Limitation of liability – Art. 6

- 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.

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### Compulsory insurance and Direct action against the insurer

- 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.

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### Insurance certificates – Art. 7

#### 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
- 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 to issue the certificates
- The Convention provides for the model form

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#### Insurance certificates – Art. 7

- Certificates must be in either English, French or Spanish or, if in another language, must be translated into one of the three specified languages.
- 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.

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#### Direct action – Art. 7.10

- 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

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

- 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

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

- 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.

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### Bunkers Convention v. Civil Liability Convention

- Bunker has a different definition of “oil”
- There is no second tier “Fund”
- Claims are not channelled on to the “registered owner”
- No limits of its own, but links to limits set out by the LLMC 1976/96 (new limits entered into force in June 2015)
- Compulsory insurance requirement set at over 1,000 gt regardless of the type of ship

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### Implementation of the Bunker Convention

- Issuance of Bunkers certificates
  - Assembly Resolution on the issuing of insurance certificates for bareboat chartered ships recommending that all States parties should recognize that certificates for ships under bareboat charter should be issued by the flag State, if that State is party to the Convention (A.1028(26)).
  - Assembly Resolution on the issue of bunkers certificates to ships that are also required to hold a CLC certificate recommending to States to require ships flying their flag or entering or leaving their ports to hold a certificate as prescribed by the Bunkers Convention, even when the ship concerned also holds a certificate issued under the CLC (A.1055(27)).

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### Implementation of the Bunker Convention

- 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) (CL 3145 of 2011 and CL 3464 of 2014, replaced by **LEG.1/Circ.16, 20 June 2024**)

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### Implementation of the Bunker Convention

- Domestic legislation to provide a prevention and compensation regime for bunker pollution
  - Ensure that owners of ships of 1,000 gross tonnes or more:
    - registered owners are required to have insurance to cover their liability (with accompanying offences); and
    - certificates should be carried on board ships to verify that insurance exists (with accompanying offences);
  - Administrative details concerning issuing and checking of certificates by the Administration
  - Ensure that courts have jurisdiction to hear claims and there is a clear guidance on where claims for compensation may be taken;
  - Recognise the final judgments from courts in other State parties in respect of convention claims;

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## QUESTIONS AND ANSWERS

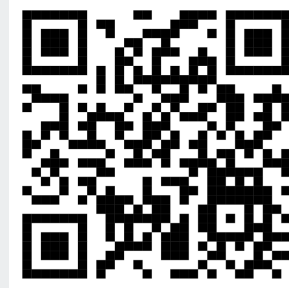
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THANK YOU FOR YOUR ATTENTION!

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## CONVENTION RESOURCE MATERIALS

[bit.ly/4m9stkN](https://bit.ly/4m9stkN)



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