



**IMO**  
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# **A Decree to Incorporate the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 into the Laws of Guatemala and Regulations to Provide for the Effective Implementation Thereof**

**A Legislation Drafting Project submitted in partial fulfillment of the  
requirements for the award of the Degree of Master of Laws (LL.M.) in  
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## LIST OF ABBREVIATIONS

<b>Bunkers Convention</b>	International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001.
<b>MARPOL</b>	International Convention for the Prevention of Pollution from Ships, 1973, and its amendments by the Protocol of 1978.
<b>CLC 1969, as amended</b>	International Convention on Civil Liability for Oil Pollution Damage, 1969, and its amendments by the Protocol of 1992.
<b>HNS 1996, as amended</b>	International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996, and its amendments by the Protocol of 2010
<b>IMO</b>	International Maritime Organization.
<b>EEZ</b>	Exclusive economic zone.
<b>LLMC 1976, as amended</b>	Convention on Limitation of Liability for Maritime Claims, 1976, and its amendments by the Protocol of 1996.

## INTRODUCTION

The protection of the environment has been for several years a relevant issue for the State of Guatemala. Throughout history, some international conventions have been ratified and implemented in national legislation to contribute to this goal and to ensure compliance with international standards. Even the Constitution of the Republic of Guatemala states in Article 97:

*The Environment and the Ecological Balance. The State, the municipalities and the inhabitants of the national territory are obligated to promote the social, economic, and technological development that prevents the pollution of the environment and maintains the ecological balance. All the necessary regulations will be dictated to guarantee that the use of the fauna, the flora, the land, and the water, are conducted rationally, avoiding their depredation.*<sup>1</sup>

In this regard, Guatemala has ratified several preventive conventions, such as the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 and its Annexes (MARPOL), and in terms of the liability and compensation regime, it has demonstrated an active role in the ratification of the International Convention on Civil Liability for Oil Pollution Damage, 1969, and its amendments by the Protocol of 1992 (CLC 1969, as amended). This demonstrates Guatemala's commitment to the preservation of the marine environment. Consequently, the natural next step for the State is to continue developing the liability regime in order to protect the environment and thus adopt the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention), which although modeled in the CLC 1969, as amended, covers damage pollution not covered in that Convention.

The Bunkers Convention was adopted on 23 March 2001 at the International Maritime Organization (IMO) Headquarters. This Convention is a complement to the CLC 1969, as amended<sup>2</sup> and to the International Convention on Liability and Compensation for Damage in

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<sup>1</sup> Emphasis added.

<sup>2</sup> The CLC 1969, as amended was adopted to ensure that adequate compensation is available to persons who suffer oil pollution damage resulting from maritime casualties involving oil-carrying ships; it was amended by a Protocol in

Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996, and its amendments by the Protocol of 2010 (HNS 1996, as amended).<sup>3</sup> The Bunkers Convention entered into force on 21 November 2008 and as at April 2019, the treaty has been acceded to by 92 States, representing 92.97 percent of the world's tonnage.<sup>4</sup>

Oil tankers are not the only vessels that cause pollution damage at sea. Therefore, the object of the Convention is to ensure that adequate, prompt, and effective compensation is available to persons who suffer damage caused by bunker oil spills.<sup>5</sup>

This Convention is of special relevance to Guatemala, because it forms part of the environmental measures that must be taken in order to comply with international standards. The purpose of this project is therefore to provide for the incorporation and the efficient implementation of the Convention in Guatemala's law, beginning with an explanatory note, which will set out the basic provisions of the Convention and highlight the importance of the incorporation to the national legislation. The implementing process will be also discussed and explained, including the Decree of accession to the Convention and the draft which implements the Bunkers Convention in domestic law.

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1992; International Maritime Organization, 'International Convention on Civil Liability for Oil Pollution Damage' <[http://www.imo.org/en/about/conventions/listofconventions/pages/international-convention-on-civil-liability-for-oil-pollution-damage-\(clc\).aspx](http://www.imo.org/en/about/conventions/listofconventions/pages/international-convention-on-civil-liability-for-oil-pollution-damage-(clc).aspx)> accessed 24 December 2018.

<sup>3</sup> The HNS 1996, as amended was adopted by an international conference in 1996 and is based on the highly successful model of the Civil Liability and Fund Conventions which cover pollution damage caused by spills of persistent oil from tankers; International Maritime Organization, 'HNS Convention implementation' <<http://www.imo.org/en/OurWork/Legal/HNS/Pages/HNSConvention.aspx>> accessed 24 December 2018.

<sup>4</sup> International Maritime Organization, 'Status of Treaties' <<http://www.imo.org/en/About/Conventions/StatusOfConventions/Documents/StatusOfTreaties.pdf>> accessed 4 May 2019.

<sup>5</sup> International Maritime Organization, 'International Convention on Civil Liability for Bunker Oil Pollution Damage' <[http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-onCivilLiability-for-Bunker-Oil-Pollution-Damage-\(BUNKER\).aspx](http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-onCivilLiability-for-Bunker-Oil-Pollution-Damage-(BUNKER).aspx)> accessed 24 December 2018.

## EXPLANATORY NOTE

### 1. THE BUNKERS CONVENTION<sup>6</sup>

The purpose of the Bunkers Convention as stated by the IMO is to ensure that adequate, prompt, and effective compensation is available to persons who suffer damage caused by bunkers oil spills.<sup>7</sup>

#### 1.1. Scope of Application

The scope of application of the Bunkers Convention can be analyzed from two points of view; first, the territorial application of the Convention and second, the losses that are covered by the Convention.

##### 1.1.1. *Territorial application*

In accordance with Article 2 the Bunkers Convention applies to pollution damage caused by bunker oil of a ship, which is caused in the territory, including the territorial sea of a State and also the exclusive economic zone (EEZ) of a State Party,<sup>8</sup> and to preventive measures, wherever taken, to prevent or minimize such damage, in the territory, including the territorial sea of a State and also the EEZ of a State Party.

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<sup>6</sup> International Convention on Civil Liability for Bunker Oil Pollution Damage, (23 March 2001, entered into force 21 November 2008) 402 UNTS 71.

<sup>7</sup> International Maritime Organization, 'International Convention on Civil Liability for Bunker Oil Pollution Damage' <[http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-onCivilLiability-for-Bunker-Oil-Pollution-Damage-\(BUNKER\).aspx](http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-onCivilLiability-for-Bunker-Oil-Pollution-Damage-(BUNKER).aspx)> accessed 24 December 2018.

<sup>8</sup> Article 2. / If a State Party has not established an EEZ, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured.

Therefore, it can be said that “*the actual location where the incident causing the damage occurs, is irrelevant*”<sup>9</sup> because, the Bunkers Convention applies even if the incident occurred in the high seas, but due to it pollution damage was caused in some of the aforementioned areas.

### **1.1.2. Types of loss covered**

The Bunkers Convention applies exclusively to “pollution damage”, caused by “bunker oil” of a “ship”, as it is established in Article 2 and also to the “preventive measures” which can be taken to minimize or prevent the damages.

The Bunkers Convention sets the following definitions, which are relevant for the application of this Convention:

**“Pollution damage”**<sup>10</sup> is defined under the Convention as:

- a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of **bunker oil** from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and*
- (b) the costs of preventive measures and further loss or damage caused by preventive measures.*

The definition is almost identical to the one in the CLC 1969, as amended, the only difference that can be found is that the word “oil” is substitute by “bunker oil”, which makes a big difference.

The Convention defines **“bunker oil”**<sup>11</sup> as:

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<sup>9</sup> Norman A Martínez Gutiérrez, *Limitation of Liability in International Maritime Conventions: The Relationship Between Global Limitation Conventions and Particular Liability Regimes* (Routledge, New York 2011) 158-160.

<sup>10</sup> Article 1(9).

<sup>11</sup> Article 1(5).



*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.*

This definition highlights two relevant points that must be taken into consideration for the interpretation of the Convention. First, the only restriction that it establishes is the test of use or intention to use for the operation or propulsion of the ship,<sup>12</sup> and second, the definition of bunker oil is not limited to persistent oils, that means that apart from heavy fuel oils it also includes lighter fuels, such as marine diesels and also lubricating oils. This opens the scope of application of the Bunkers Convention and differentiates it from the CLC 1969, as amended.<sup>13</sup>

The definition of **“ship”**<sup>14</sup> under this Convention is very wide, and is defined as:

*any seagoing vessel and seaborne craft, of any type whatsoever.*

Contrary to the CLC 1969, as amended the definition in the Bunkers Convention is applicable to “any” vessel, this means that it can be employed for example to bulk carriers, passenger ships, container ships, tugs, fishing vessels, launch, etc., the only requisite is that the ship must be seagoing. However, the term “seagoing” may be a problem for the interpretation of the Convention, because it might mean a) a vessel that is physically capable of going to sea or b) one that is legally entitled to go to sea, because it complies with all legal requirements or c) one that in practice goes to sea or it can also be d) a combination of these.<sup>15</sup>

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<sup>12</sup> Martínez Gutiérrez (n9) 160.

<sup>13</sup> Craig Forrest and Nicholas Gaskell, *Marine pollution Damage in Australia: Implementing the Bunker Oil Convention 2001 and the Supplementary Fund Protocol 2003.* (2008) 2: 130.

<sup>14</sup> Article 1 (1).

<sup>15</sup> Forrest and Gaskell (n13) 132.

### 1.1.3. Exclusions

It may be mentioned that the CLC 1969, as amended and the Bunkers Convention seem to be mutually exclusive,<sup>16</sup> as the Bunkers Convention does not apply to pollution damage as defined in the CLC 1969, as amended, whether or not compensation is payable in respect of it under that Convention. Another exclusion is made to warships, naval auxiliary or other ships owned or operated by a State and used for the time being only on Government non-commercial service.<sup>17</sup>

## 1.2. Liability

As pointed out in Article 3 of the Bunkers Convention, at the time of an incident, there is strict liability of the shipowner for pollution damage caused by any bunker oil on board or originating from the ship, provided that, if an incident consists of a series of occurrences having the same origin, the liability shall attach to the shipowner at the time of the first of such occurrences. If there is more than one person liable, there is a joint and several liability to be considered.<sup>18</sup> However, it is interesting to mention that the CLC 1969, as amended determines liability only for the “registered” owner of the ship, as opposed to the Bunkers Convention in which shipowner means *the owner, including the registered owner, bareboat charterer, manager and operator of the ship*.<sup>19</sup>

Notwithstanding the above, the shipowner’s liability is not absolute, as there are standard defences that the shipowner has under Article 3(3) of the Bunkers Convention. Consequently, the shipowner will not be liable for pollution damage if he proves that:

*(a) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or*

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<sup>16</sup> Gard, ‘The New Bunker Convention’ (2002) <<http://www.gard.no/web/updates/content/53290/the>> accessed 26 December 2018.

<sup>17</sup> Article 4.

<sup>18</sup> Article 3.

<sup>19</sup> Article 1(3).

*(b) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or*

*(c) the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.<sup>20</sup>*

The defences are very clear, but it is important to mention that in the case of Article 3(3)(a) it would apply only if one of the mentioned situations are the primary or proximate cause of the damage.<sup>21</sup> And in the case of Article 3(3)(b) and (c), it would apply only if the acts were caused by a third party.

Under Article 3(4) of the Bunkers Convention the shipowner should prove that there has been contributory negligence by the person who suffered the damage to be excluded from liability:

*4. If the shipowner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the shipowner may be exonerated wholly or partially from liability to such person.<sup>22</sup>*

### **1.3. Compulsory Insurance or Financial Security and Direct Action Against the Insurer**

The Bunkers Convention establishes two essential aspects first, the compulsory nature of the cover in the case of damage by having an insurance and second, the ability of the claimant to sue the insurer directly.

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<sup>20</sup> Article 4.

<sup>21</sup> Martínez Gutiérrez (n9) 241.

<sup>22</sup> Article 4.

### **1.3.1. *The amount of compulsory insurance cover***

The provisions which are related to compulsory insurance in the Bunkers Convention are very similar to those in the CLC 1969, as amended and in the Nairobi International Convention on the Removal of Wrecks.

Article 7(1) of the Bunkers Convention determines that a shipowner of a vessel with a gross tonnage greater than 1,000 is required to have an appropriate insurance or other financial security, which can also be the guarantee of a bank, for example, with the purpose of covering the liability of the shipowner for pollution damage. The limits of liability should be estimated in an amount equal to that under the applicable national or international limitation regime, but in all cases and this is very important, it does not have to exceed an amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976, as amended. (LLMC 1976, as amended).<sup>23</sup>

### **1.3.2. *The compulsory insurance certificate***

State Parties are obliged to ensure that ships with a gross tonnage greater than 1,000 have a convention certificate in force every time they enter or leave their ports. This certificate must be issued by States parties to the Convention according to the model set in the Annexes of the Convention.

### **1.3.3. *Direct action against the insurer***

The Bunkers Convention sets under Article 7 (10) that in any case, any claim for pollution damage may be exercised directly against the insurer or the person providing financial security. In this case, the defendant may invoke the same exclusions that the shipowner would have been entitled to invoke in accordance with the Convention. The defendant has the right to require the shipowner to be joined in the proceedings. According to Article 6 if the shipowner is not entitled to limitation

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<sup>23</sup> Article 7.

of liability, the defendant may still limit liability to an amount equal to the amount of the insurance or other financial security required.<sup>24</sup>

#### **1.4. Time Limits and Jurisdiction**

Following the same pattern as in the CLC 1969, as amended there is a time bar in Article 8 for claims under the Convention. The action must be exercised within three years from the date of the damage. It must be taken in consideration that it is possible, after a ship sinks, that oils escape many years later, therefore there is a time bar of six years set from the date of the incident causing the damage in the Convention. As Article 1(8) of the Convention states, an incident is *any occurrence or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage.*<sup>25</sup>

Regarding jurisdiction, the action must be brought in the courts of the State where the pollution damage has been caused. It is relevant to note that the Convention established the obligation to specify which domestic Court is going to have competence to attend that matter.

#### **1.5. Recognition and Enforcement of Judgements**

The Bunkers Convention under Article 10 imposes the obligation of recognition of any judgement given by a Court with jurisdiction related to pollution damage. The only exceptions are:

- (a) where the judgement was obtained by fraud; or*
- (b) where the defendant was not given reasonable notice and a fair opportunity to present his or her case.*<sup>26</sup>

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<sup>24</sup> *ibid.*

<sup>25</sup> Article 1.

<sup>26</sup> Article 10.

## 1.6. Limitation of Liability

The Convention does not establish an independent limitation of liability regime. From the origin of the Bunkers Convention it was recognized that there should not be strict liability without a corresponding financial limit to that liability, but the question was what form that limit should take. The problem was that the general convention on limitation, the LLMC 1976, as amended made no allowance for a future Bunkers Convention with its own separate limits.<sup>27</sup>

The 77th Session of the IMO Legal Committee in 1998 decided that there should be no stand-alone limits and that liability for bunker pollution should be subject to limitation of liability by reference to the LLMC 1976, as amended. But there was then the difficult question of ‘linkage’, as some States might want to be a party to the Bunker Oil Convention, but not to the LLMC 1976, as amended.<sup>28</sup>

A new draft was introduced at the 79th Session in April 1999, which was in effect a simple statement preserving existing rights. With one minor addition this draft was eventually adopted in Article 6; which states:

*Nothing in this Convention shall affect the right of the shipowner and the person or persons providing insurance or other financial security to limit liability under any applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.*<sup>29</sup>

This is an unfortunate provision, because it allows a State Party, in effect, to choose which limitation regime to apply. For shipowners, this means that they may face unlimited liability in some States, which can be also prejudicial.

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<sup>27</sup> Forrest and Gaskell (n13) 157.

<sup>28</sup> Ibid, 158.

<sup>29</sup> Article 6.

## **2. RESOLUTIONS OF THE INTERNATIONAL CONFERENCE ON LIABILITY AND COMPENSATION FOR BUNKER OIL POLLUTION DAMAGE, 2001<sup>30</sup>**

During the International Conference on Liability and Compensation for Bunker Oil Pollution Damage, held on 27 March 2001, the Conference adopted some resolutions that are to be taken in consideration regarding the Bunkers Convention, because they complement the Convention.

### **2.1. Resolution on Limitation of Liability<sup>31</sup>**

The Conference advised and urged the States, that have not yet done so, to ratify or accede to the Protocol of 1996 to amend the LLMC 1976 and encouraged State Parties to the LLMC 1976 to denounce that Convention, with the purpose of implementing the Protocol of 1996 and most important they recommended that each State, at the moment of the implementation of the Bunkers Convention in the national law has to make clear which limitation of liability regime is applicable according to Article 6 of the Bunkers Convention.

### **2.2. Resolution on Promotion of Technical Co-Operation<sup>32</sup>**

Technical co-operation is very important for the correct and effective implementation of the Bunkers Convention in each Member State. Therefore, the IMO urged through this resolution States to promote and provide directly or through IMO, support to States that request technical assistance for that purpose. This includes the assessment of the implications of ratifying, accepting, approving, or acceding to and complying with the Bunkers Convention, the development of national legislation to give effect to the Convention; and also the introduction of other measures

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<sup>30</sup> International Maritime Organization, ‘Adoption of the Final Act and Any Instruments, Recommendations and Resolutions resulting from the Work of the Conference: Conference Resolutions’ (2001) <[https://www.mardep.gov.hk/en/aboutus/pdf/scc\\_p134\\_annex3.pdf](https://www.mardep.gov.hk/en/aboutus/pdf/scc_p134_annex3.pdf)> accessed 03 March 2019.

<sup>31</sup> LEG/CONF.12/18 of 27 March 2001.

<sup>32</sup> *ibid.*

for and the training of personnel charged with the effective implementation and enforcement of the Convention.

### **2.3. Resolution on Protection for Persons Taking Measures to Prevent or Minimize the Effects of Oil Pollution<sup>33</sup>**

This resolution was taken based in the CLC 1969, as amended and the HNS 1996, as amended, which unlike to the Bunkers Convention contain provisions on protection for persons taking measures to prevent or minimize the effects of oil pollution. Consequently, the Conference urged the States, that at the moment of implementation in their domestic law to consider the need to introduce legal provision for protection for persons taking measures to prevent or minimize the effects of bunker oil pollution, so that they can be exempt from liability unless the liability in question resulted from their personal act or omission committed with the intent to cause damage or recklessly and with knowledge that such damage would probably result.

In the resolution the Conference recommended to consider the provisions of Article 7 paragraphs 5 (a), (b), (d), (e) and (f) of the HNS 1996.<sup>34</sup> Accordingly, a provision dealing with responder immunity may read as follows:

No claim for compensation for damage may be made against:

- (a) the servants or agents of the owner or the members of the crew;
- (b) the pilot or any other person who, without being a member of the crew, performs services for the ship;
- (c) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
- (d) any person taking preventive measures; and
- (e) the servants or agents of persons mentioned in (c) and (d);

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<sup>33</sup> *ibid.*

<sup>34</sup> In the resolution the Conference recommended to consider the provisions of Article 7 paragraph 5 of the HNS 1996, but it has to be emphasized that paragraph c) was omitted, which dealt with any charterer (howsoever described, including a bareboat charterer), manager or operator of the ship. Therefore paragraphs d) and e) had been renumbered accordingly.



whenever any of the persons listed are undertaken preventive measures, unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

### **3. IMO MEASURES**

#### **3.1. Issue of Bunkers Certificates to Ships That Are Also Required to Hold a CLC Certificate<sup>35</sup>**

Another IMO Resolution dealt with the issue of the required certificates under the CLC 1969, as amended and the Bunkers Convention. This resolution recommends that even when a State is a Party to the CLC 1969, as amended and has the obligation of the issuance of a CLC certificate, the States Parties to the Bunkers Convention should issue the certificate prescribed by the Bunkers Convention even when the ships concerned also hold a CLC certificate.

#### **3.2. Electronic Blue Cards Resolution<sup>36</sup>**

During its 97th Session the IMO Legal Committee approved the Guidelines for Accepting Documentation from Insurance Companies, Financial Security Providers and P&I Clubs. The purpose of the Guidelines is to conduct the States Parties to the Bunkers Convention with criteria that should be considered to accept the so called Blue Cards or similar documentation from insurance companies.

State Parties to the Bunkers Convention are advised to accept a Blue Card issued by a member of the International Group of P&I Associations, only when it is possible to verify the Blue Card from the P&I Clubs website. When a State Party receives a Blue Card or other similar documentation

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<sup>35</sup> A 27/Res.1055 of 20 December 2011.

<sup>36</sup> LEG 97/15 of 1 December 2010.

from insurance companies, financial security providers and P&I Clubs outside the International Group, such State should verify the financial status and solvency of the company to assure the prompt and adequate compensation for the victims in case of bunker oil pollution damage.

State Parties are encouraged to exchange information regarding which P&I Clubs outside the International Group they have accepted in the process of issuing Bunkers Convention certificates and the criteria they established to accept the relevant Blue Cards. Such exchange of information between State Parties plays an important role in order to minimize administrative burdens.

#### **4. THE IMPLEMENTATION OF THE BUNKERS CONVENTION IN GUATEMALA'S LAW**

##### **4.1. Why is it Important?**

Guatemala currently has five seaports, two of which are located on the Atlantic Coast: Santo Tomás de Castilla and Puerto Barrios. The other three are Puerto Quetzal, San José and Champerico on the Pacific Ocean. These five ports communicate with each other through the national road network.<sup>37</sup>

As it was mentioned before, Guatemala has ratified several preventive conventions, such as MARPOL and in terms of liability has demonstrated an active role in the ratification of the CLC 1969, as amended. This demonstrates Guatemala's commitment to the preservation of the marine environment. Consequently, the natural next step for the State, so as to continue developing the liability regime in order to protect the environment, is to adopt the Bunkers Convention, which deals with pollution damage. It is important to highlight that if any bunker oil spill occurs at this moment in Guatemala, there is no strict liability regarding bunker oil pollution damage, there is

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<sup>37</sup> Mundo Marítimo, 'Información Marítima de Latinoamérica. Una mirada a los principales puertos de Centroamérica' (2016) <<https://www.mundomaritimo.cl/noticias/una-mirada-a-los-principales-puertos-de-centroamerica>> accessed 27 December 2018.

no compulsory insurance for ships with a gross tonnage greater than 1,000 and as a result the Government has to pay all cost for the recovery of pollutants, clean up, restoration operations and third party damages. This causes high costs to the Government and is detrimental to the national budget. Therefore, the adoption of the Bunkers Convention will enable the State to comply not only with constitutional matters, but also to comply with the international standards in the subject and to benefit from it.

#### **4.2. How to Implement it?**

According to Guatemala's Constitution, specifically Article 171(I) to introduce an international Convention into Guatemala's legal system, it is necessary that the Congress approves it through a Decree, before its ratification by the Executive Power. After the internal ratification by the Executive Power, the Executive Power will order its publication in the Official Gazette, so that it can be considered as part of Guatemala's Law.

Once it is approved, Guatemala must implement the Convention. This is important because, the Bunkers Convention imposes on State parties the obligation of regulating some aspects of the Convention, in particular the following:

**Definitions (Article 1 Bunkers Convention):** The Convention sets some definitions of terms that are part of the Convention. In addition to those definitions and in order to establish a good understanding for Guatemala other terms must be defined such as Authority.

**Scope of application (Article 2 Bunkers Convention):** Guatemala declared its EEZ, therefore it is not necessary to establish the limits in accordance with international law.

**Exclusions (Article 4 Bunkers Convention):** The Convention gives the decision to States Party to apply it to their warships, but in the drafting, which is annexed to this project it will not be taken into consideration.

**Limitation of liability (Article 6 Bunkers Convention):** It is important to mention that the Convention establishes that the limitation should be under national or international law, it mentions the limits that the LLMC 1976 as amended sets, but Guatemala is not yet a party to that Convention, so it is important until its future ratification to stipulate which are the limits of liability. Therefore, in the implementing Regulations, a final and transitory provision is going to be included providing the limits that must be taken in consideration until Guatemala ratifies the LLMC 1996 Protocol, as amended.

**Compulsory Insurance or Financial Security Certificate (Article 7 Bunkers Convention):**

The registered owner of a ship with a gross tonnage greater than 1,000 is obliged under the Bunkers Convention to maintain insurance or at least other financial security to cover its liability. The Convention specifies that each State must issue to each ship under its registration a certificate that insurance or financial security is in force; this should fulfill the requirements of the Convention. This duty should be complied with by the competent “Authority”, which in these Regulations will be the General Directorate of Maritime Affairs of the Ministry of National Defense of Guatemala which will also keep a copy of the certificate. In relation to the language of the certificate it will be issued in Spanish, which is the official language of the State with translation into English. The conditions for its issuance and the validity of the certificate must be reflected in the implementing Regulations. Consequently, it will establish and determine the reasons when it will be considered valid and when it will cease to be valid. Furthermore, the Port State’s authorities will not permit a ship under its flag to operate at any time, unless the certificate has been issued in accordance to the norm.

Guatemala as a State Party will accept a Blue Card issued by a member of the International Group of P&I Associations, only when it is possible to verify the Blue Card from the P&I Clubs website. If Guatemala receives a Blue Card or other similar documentation from insurance companies, financial security providers and P&I Clubs outside the International Group, it has to verify the financial status and solvency of the company to assure the prompt and adequate compensation for the victims in case of bunker oil pollution damage.

Guatemala will provide information regarding which P&I Clubs outside the International Group they have accepted in the process of issuing Bunkers Convention certificates and the criteria they established to accept the certificates, if it is required.

**Jurisdiction (Article 9 Bunkers Convention):** The Regulations will determine which national Courts have jurisdiction to deal with an action which is brought to them in relation to pollution damage. It can be said that due to the nature of the action, the competent Court will be the Civil Court of First Instance. In accordance with the procedure established in Part II, Title I of the Civil and Commercial Procedural Code, Decree No. 107, the term “competent” makes reference to the Court which in relation to Procedural Law is the one which will be in charge of the dispute, which will vary depending on the amount of the dispute, the place of the incident, etc.

**Responder Immunity:** Although the Bunkers Convention did not exclude from liability persons who take reasonable measures in response to a bunker oil spill, the resolution of the Conference, recommended to do so, as it encourages persons to undertake preventive measures without the fear of resulting liable by any chance. Therefore, the provision about that matter will be taken in consideration in the Regulations implementing the Convention in Guatemala.

**A DECREE TO INCORPORATE THE INTERNATIONAL CONVENTION  
ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE, 2001  
INTO THE LAWS OF GUATEMALA**

**DECREE NUMBER \_\_\_\_-2019**

**THE CONGRESS OF THE REPUBLIC OF GUATEMALA**

**WHEREAS:**

The Executive Power referred to the Congress of the Republic the INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE, 2001, for its approval,

**WHEREAS:**

The aforementioned Convention is intended to ensure that adequate, prompt, and effective compensation is available to persons who suffer damage caused by bunker oil spills,

**WHEREAS:**

The Political Constitution of the Republic establishes the obligation to protect and improve the environment, as well as the obligation to legislate for that purpose.

**THEREFORE:**

In exercise of the powers conferred by Article 171 i) of the Political Constitution of the Republic;

**DECREES:**

**ARTICLE 1.** The approval of the INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE, 2001, attached as an annex to this Decree.

**ARTICLE 2.** The Executive Power shall adopt the necessary Regulations for the compliance with this Decree.

**ARTICLE 3.** The present Decree will enter into force eight days after its publication in the Official Gazette.

**REFERRED BACK TO THE EXECUTIVE POWER FOR ITS SANCTION, PROMULGATION, AND PUBLICATION.**

PALACE OF THE LEGISLATIVE POWER, GUATEMALA CITY, ON THE XXX

**ALVARO ARZÚ ESCOBAR  
PRESIDENT**

**ESTUARDO ERNESTO GALDÁMEZ  
SECRETARY I**

**JUAN MANUEL GIORDANO  
SECRETARY II**

NATIONAL PALACE: Guatemala, \_\_\_\_\_ 2019

**LET IT BE PUBLISHED AND DULY IMPLEMENTED**

## ANNEX

### **INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE, 2001**

The States Parties to this Convention,

RECALLING article 194 of the United Nations Convention on the Law of the Sea, 1982, which provides that States shall take all measures necessary to prevent, reduce and control pollution of the marine environment,

RECALLING ALSO article 235 of that Convention, which provides that, with the objective of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, States shall co-operate in the further development of relevant rules of international law,

NOTING the success of the International Convention on Civil Liability for Oil Pollution Damage, 1992 and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 in ensuring that compensation is available to persons who suffer damage caused by pollution resulting from the escape or discharge of oil carried in bulk at sea by ships,

NOTING ALSO the adoption of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 in order to provide adequate, prompt and effective compensation for damage caused by incidents in connection with the carriage by sea of hazardous and noxious substances,

RECOGNIZING the importance of establishing strict liability for all forms of oil pollution which is linked to an appropriate limitation of the level of that liability,

CONSIDERING that complementary measures are necessary to ensure the payment of adequate, prompt and effective compensation for damage caused by pollution resulting from the escape or discharge of bunker oil from ships,

DESIRING to adopt uniform international rules and procedures for determining questions of liability and providing adequate compensation in such cases,



HAVE AGREED as follows:

**Article 1**

**Definitions**

For the purposes of this Convention:

1. "Ship" means any seagoing vessel and seaborne craft, of any type whatsoever.
2. "Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.
3. "Shipowner" means the owner, including the registered owner, bareboat charterer, manager and operator of the ship.
4. "Registered owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "registered owner" shall mean such company.
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.
6. "Civil Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1992, as amended.
7. "Preventive measures" means any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage.
8. "Incident" means any occurrence or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage.
9. "Pollution damage" means:

- (a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of bunker oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and
  - (b) the costs of preventive measures and further loss or damage caused by preventive measures.
- 10. "State of the ship's registry" means, in relation to a registered ship, the State of registration of the ship and, in relation to an unregistered ship, the State whose flag the ship is entitled to fly.
- 11. "Gross tonnage" means gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex 1 of the International Convention on Tonnage Measurement of Ships, 1969.
- 12. "Organization" means the International Maritime Organization.
- 13. "Secretary-General" means the Secretary-General of the Organization.

## ***Article 2***

### ***Scope of application***

This Convention shall apply exclusively:

- a. to pollution damage caused:
  - (i) in the territory, including the territorial sea, of a State Party, and
  - (ii) in the exclusive economic zone of a State Party, established in accordance with international law, or, if a State Party has not established such a zone, in an area beyond and adjacent to the territorial sea of that State

determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;

- b. to preventive measures, wherever taken, to prevent or minimize such damage.

### ***Article 3***

#### ***Liability of the shipowner***

1. Except as provided in paragraphs 3 and 4, the shipowner at the time of an incident shall be liable for pollution damage caused by any bunker oil on board or originating from the ship, provided that, if an incident consists of a series of occurrences having the same origin, the liability shall attach to the shipowner at the time of the first of such occurrences.
2. Where more than one person is liable in accordance with paragraph 1, their liability shall be joint and several.
3. No liability for pollution damage shall attach to the shipowner if the shipowner proves that:
  - (a) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
  - (b) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or
  - (c) the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

4. If the shipowner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the shipowner may be exonerated wholly or partially from liability to such person.
5. No claim for compensation for pollution damage shall be made against the shipowner otherwise than in accordance with this Convention.
6. Nothing in this Convention shall prejudice any right of recourse of the shipowner which exists independently of this Convention.

#### ***Article 4***

#### ***Exclusions***

1. This Convention shall not apply to pollution damage as defined in the Civil Liability Convention, whether or not compensation is payable in respect of it under that Convention.
2. Except as provided in paragraph 3, the provisions of this Convention shall not apply to warships, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on Government non-commercial service.
3. A State Party may decide to apply this Convention to its warships or other ships described in paragraph 2, in which case it shall notify the Secretary-General thereof specifying the terms and conditions of such application.
4. With respect to ships owned by a State Party and used for commercial purposes, each State shall be subject to suit in the jurisdictions set forth in article 9 and shall waive all defences based on its status as a sovereign State.

## **Article 5**

### ***Incidents involving two or more ships***

When an incident involving two or more ships occurs and pollution damage results therefrom, the shipowners of all the ships concerned, unless exonerated under article 3, shall be jointly and severally liable for all such damage which is not reasonably separable.

## **Article 6**

### ***Limitation of liability***

Nothing in this Convention shall affect the right of the shipowner and the person or persons providing insurance or other financial security to limit liability under any applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

## **Article 7**

### ***Compulsory insurance or financial security***

1. The registered owner of a ship having a gross tonnage greater than 1000 registered in a State Party shall be required to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover the liability of the registered owner for pollution damage in an amount equal to the limits of liability under the applicable national or international limitation regime, but in all cases, not exceeding an amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.
2. A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that the requirements of paragraph 1 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. This

certificate shall be in the form of the model set out in the annex to this Convention and shall contain the following particulars:

- (a) name of ship, distinctive number or letters and port of registry;
- (b) name and principal place of business of the registered owner;
- (c) IMO ship identification number;
- (d) type and duration of security;
- (e) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established;
- (f) period of validity of the certificate which shall not be longer than the period of validity of the insurance or other security.

3.

- (a) A State Party may authorize either an institution or an organization recognized by it to issue the certificate referred to in paragraph 2. Such institution or organization shall inform that State of the issue of each certificate. In all cases, the State Party shall fully guarantee the completeness and accuracy of the certificate so issued and shall undertake to ensure the necessary arrangements to satisfy this obligation.
- (b) A State Party shall notify the Secretary-General of :
  - (i) the specific responsibilities and conditions of the authority delegated to an institution or organization recognised by it;
  - (ii) the withdrawal of such authority; and

- (iii) the date from which such authority or withdrawal of such authority takes effect.

An authority delegated shall not take effect prior to three months from the date on which notification to that effect was given to the Secretary-General.

- (c) The institution or organization authorized to issue certificates in accordance with this paragraph shall, as a minimum, be authorized to withdraw these certificates if the conditions under which they have been issued are not maintained. In all cases the institution or organization shall report such withdrawal to the State on whose behalf the certificate was issued.

4. The certificate shall be in the official language or languages of the issuing State. If the language used is not English, French or Spanish, the text shall include a translation into one of these languages and, where the State so decides, the official language of the State may be omitted.
5. The certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a State Party, with the authorities issuing or certifying the certificate.
6. An insurance or other financial security shall not satisfy the requirements of this article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2 of this article, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 5 of this article, unless the certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any

modification which results in the insurance or security no longer satisfying the requirements of this article.

7. The State of the ship's registry shall, subject to the provisions of this article, determine the conditions of issue and validity of the certificate.
8. Nothing in this Convention shall be construed as preventing a State Party from relying on information obtained from other States or the Organization or other international organisations relating to the financial standing of providers of insurance or financial security for the purposes of this Convention. In such cases, the State Party relying on such information is not relieved of its responsibility as a State issuing the certificate required by paragraph 2.
9. Certificates issued or certified under the authority of a State Party shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other States Parties as having the same force as certificates issued or certified by them even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the insurance certificate is not financially capable of meeting the obligations imposed by this Convention.
10. Any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the registered owner's liability for pollution damage. In such a case the defendant may invoke the defences (other than bankruptcy or winding up of the shipowner) which the shipowner would have been entitled to invoke, including limitation pursuant to article 6. Furthermore, even if the shipowner is not entitled to limitation of liability according to article 6, the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained in accordance with paragraph 1. Moreover, the defendant may invoke the defence that the pollution damage



resulted from the wilful misconduct of the shipowner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the shipowner against the defendant. The defendant shall in any event have the right to require the shipowner to be joined in the proceedings.

11. A State Party shall not permit a ship under its flag to which this article applies to operate at any time, unless a certificate has been issued under paragraphs 2 or 14.
12. Subject to the provisions of this article, each State Party shall ensure, under its national law, that insurance or other security, to the extent specified in paragraph 1, 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.
13. Notwithstanding the provisions of paragraph 5, a State Party may notify the Secretary-General that, for the purposes of paragraph 12, ships are not required to carry on board or to produce the certificate required by paragraph 2, when entering or leaving ports or arriving at or leaving from offshore facilities in its territory, provided that the State Party which issues the certificate required by paragraph 2 has notified the Secretary-General that it maintains records in an electronic format, accessible to all States Parties, attesting the existence of the certificate and enabling States Parties to discharge their obligations under paragraph 12.
14. If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this article relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the appropriate authority of the State of the ship's registry stating that the ship is owned by that State and that the ship's liability is covered within the limit prescribed in accordance with paragraph 1. Such a certificate shall follow as closely as possible the model prescribed by paragraph 2.

15. A State may, at the time of ratification, acceptance, approval of, or accession to this Convention, or at any time thereafter, declare that this article does not apply to ships operating exclusively within the area of that State referred to in article 2(a)(i).

### ***Article 8***

#### ***Time limits***

Rights to compensation under this Convention shall be extinguished unless an action is brought thereunder within three years from the date when the damage occurred. However, in no case shall an action be brought more than six years from the date of the incident which caused the damage. Where the incident consists of a series of occurrences, the six-years' period shall run from the date of the first such occurrence.

### ***Article 9***

#### ***Jurisdiction***

1. Where an incident has caused pollution damage in the territory, including the territorial sea, or in an area referred to in article 2(a)(ii) of one or more States Parties, or preventive measures have been taken to prevent or minimise pollution damage in such territory, including the territorial sea, or in such area, actions for compensation against the shipowner, insurer or other person providing security for the shipowner's liability may be brought only in the courts of any such States Parties.
2. Reasonable notice of any action taken under paragraph 1 shall be given to each defendant.
3. Each State Party shall ensure that its courts have jurisdiction to entertain actions for compensation under this Convention.

**Article 10**

***Recognition and enforcement***

1. Any judgement given by a Court with jurisdiction in accordance with article 9 which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognised in any State Party, except:
  - (a) where the judgement was obtained by fraud; or
  - (b) where the defendant was not given reasonable notice and a fair opportunity to present his or her case.
2. A judgement recognised under paragraph 1 shall be enforceable in each State Party as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be re-opened.

**Article 11**

***Supersession clause***

This Convention shall supersede any Convention in force or open for signature, ratification or accession at the date on which this Convention is opened for signature, but only to the extent that such Convention would be in conflict with it; however, nothing in this article shall affect the obligations of States Parties to States not party to this Convention arising under such Convention.

**Article 12**

***Signature, ratification, acceptance, approval and accession***

1. This Convention shall be open for signature at the Headquarters of the Organization from 1 October 2001 until 30 September 2002 and shall thereafter remain open for accession.
2. States may express their consent to be bound by this Convention by:
  - (a) signature without reservation as to ratification, acceptance or approval;

- (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
  - (c) accession.
- 3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.
- 4. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention with respect to all existing State Parties, or after the completion of all measures required for the entry into force of the amendment with respect to those State Parties shall be deemed to apply to this Convention as modified by the amendment.

### ***Article 13***

#### ***States with more than one system of law***

- 1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.
- 2. Any such declaration shall be notified to the Secretary-General and shall state expressly the territorial units to which this Convention applies.
- 3. In relation to a State Party which has made such a declaration:
  - (a) in the definition of "registered owner" in article 1(4), references to a State shall be construed as references to such a territorial unit;
  - (b) references to the State of a ship's registry and, in relation to a compulsory insurance certificate, to the issuing or certifying State, shall be construed

as referring to the territorial unit respectively in which the ship is registered and which issues or certifies the certificate;

- (c) references in this Convention to the requirements of national law shall be construed as references to the requirements of the law of the relevant territorial unit; and
- (d) references in articles 9 and 10 to courts, and to judgements which must be recognized in States Parties, shall be construed as references respectively to courts of, and to judgements which must be recognized in, the relevant territorial unit.

#### ***Article 14***

##### ***Entry into force***

1. This Convention shall enter into force one year following the date on which eighteen States, including five States each with ships whose combined gross tonnage is not less than 1 million, have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General.
2. 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.

#### ***Article 15***

##### ***Denunciation***

1. This Convention may be denounced by any State Party at any time after the date on which this Convention comes into force for that State.
2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.

#### ***Article 16***

##### ***Revision or amendment***

1. A conference for the purpose of revising or amending this Convention may be convened by the Organization.
2. The Organization shall convene a conference of the States Parties for revising or amending this Convention at the request of not less than one-third of the States Parties.

#### ***Article 17***

##### ***Depositary***

1. This Convention shall be deposited with the Secretary-General.
2. The Secretary-General shall:
  - (a) inform all States which have signed or acceded to this Convention of:
    - (i) each new signature or deposit of instrument together with the date thereof;
    - (ii) the date of entry into force of this Convention;
    - (iii) the deposit of any instrument of denunciation of this Convention together with the date of the deposit and the date on which the denunciation takes effect; and
    - (iv) other declarations and notifications made under this Convention.

- (b) transmit certified true copies of this Convention to all Signatory States and to all States which accede to this Convention.

***Article 18***

***Transmission to United Nations***

As soon as this Convention comes into force, the text shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

***Article 19***

***Languages***

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

Done at London this twenty-third day of March, two thousand and one.

In witness whereof the undersigned being duly authorised by their respective Governments for that purpose have signed this Convention.

**INSTRUMENT OF ACCESSION OF THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE, 2001.  
TO BE DEPOSITED WITH THE SECRETARY-GENERAL OF IMO, LONDON.**

**THE PRESIDENT OF THE REPUBLIC OF GUATEMALA**

**WHEREAS:**

The International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, was adopted at London on 23 March 2001 by the International Conference on Liability and Compensation for Bunker Oil Pollution Damage, 2001,

**AND WHEREAS:**

The Republic of Guatemala being a State entitled to become a party to the said Convention by virtue of Article 12 thereof,

**NOW THEREFORE:**

The Government of the Republic of Guatemala having considered and approved the said Convention, hereby formally declares its accession to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001.

**IN WITNESS WHEREOF I**, Jimmy Morales Cabrera, President of the Republic of Guatemala, have signed this Instrument of Accession and affixed the official seal.

DONE at ....., this..... day of ..... two thousand and nineteen.

**JIMMY MORALES CABRERA**  
PRESIDENT OF THE REPUBLIC

**SANDRA ERICA JOVEL POLANCO**  
MINISTER OF FOREIGN AFFAIRS



**Accord No. \_\_\_\_\_-2019**

**REGULATIONS FOR THE EFFECTIVE IMPLEMENTATION OF THE  
CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE.**

**THE PRESIDENT OF THE REPUBLIC OF GUATEMALA**

**WHEREAS:**

The Political Constitution of the Republic of Guatemala establishes that the State, the municipalities and the inhabitants of the national territory are obligated to promote the social, economic, and technological development that prevents the pollution of the environment and maintains the ecological balance.

**WHEREAS:**

All the necessary regulations will be dictated to guarantee that the use of the fauna, the flora, the land, and the water, are conducted rationally, avoiding their depredation.

**WHEREAS:**

Through Decree Number \_\_\_\_-2019, the INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE, 2001 done at London on 23 March 2001 was approved and Guatemala as a State Party agreed to adopt all appropriate measures and to implement laws and regulations, necessary for the effective implementation of the Convention.

**THEREFORE:**

In exercise of the powers conferred by Article 183 paragraph e) of the Political Constitution of the Republic of Guatemala,

**AGREES:**

**REGULATIONS ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE**

**CHAPTER I  
PRELIMINARY**

**Article 1. Purpose.** The purpose of these Regulations is to ensure the effective implementation of the Convention on Civil Liability for Bunker Oil Pollution Damage, 2001.

**CHAPTER II  
DEFINITIONS**

**Article 2. Definitions.** In these Regulations, unless the context otherwise requires:

- 1) "Regulations" means Regulations on Civil Liability for Bunker Oil Pollution Damage, Accord No. \_\_\_\_-2019
- 2) "Authority" means the General Directorate of Maritime Affairs of the Ministry of National Defense of Guatemala.
- 3) "Bunkers Convention" means the International Convention on Civil Liability for Bunker Oil Pollution Damage signed in London on 23rd March, 2001, including any amendment or Protocol related thereto as may from time to time be ratified, acceded to or accepted by the Government of Guatemala and other instruments, standards and specifications of a mandatory nature related thereto adopted or developed by the Organization.
- 4) "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.
- 5) "Civil Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1992, as amended.

- 6) "Gross tonnage" means gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex 1 of the International Convention on Tonnage Measurement of Ships, 1969.
- 7) "Incident" means any occurrence or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage.
- 8) "Organization" means the International Maritime Organization.
- 9) "Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.
- 10) "Pollution damage" means:
  - i) loss or damage caused outside the ship by contamination resulting from the escape or discharge of bunker oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and
  - ii) the costs of preventive measures and further loss or damage caused by preventive measures.
- 11) "Preventive measures" means any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage.
- 12) "Registered owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "registered owner" shall mean such company.
- 13) "Ship" means any seagoing vessel and seaborne craft, of any type whatsoever.
- 14) "Shipowner" means the owner, including the registered owner, bareboat charterer, manager and operator of the ship.
- 15) "State of the ship's registry" means, in relation to a registered ship, the State of registration of the ship and, in relation to an unregistered ship, the State whose flag the ship is entitled to fly.

## **CHAPTER III**

### **LIABILITY**

#### **Section I**

#### **Application**

**Article 3. Scope of application.** These Regulations shall apply:

- a) to pollution damage caused in the territory, including the territorial sea and in the exclusive economic zone of Guatemala;
- b) to preventive measures, wherever taken, to prevent or minimize such damage, in the territory, including the territorial sea, and in the exclusive economic zone of Guatemala.

**Article 4. Overlap with Civil Liability Convention.** These Regulations shall not apply to pollution damage (within the meaning of the Civil Liability Convention), whether or not compensation is payable in respect of the damage under the Decree 72-82 of the Congress of the Republic of Guatemala.

#### **Section II**

#### **Liability for pollution damage**

**Article 5. Liability of the shipowner.** Except as provided in Articles 7 and 8, the shipowner at the time of an incident shall be liable for pollution damage caused by any bunker oil on board or originating from the ship, provided that, if an incident consists of a series of occurrences having the same origin, the liability shall attach to the shipowner at the time of the first of such occurrences.

**Article 6. Joint and several liability.** Where more than one person is liable in accordance with Article 5, their liability shall be joint and several.

**Article 7. Exclusions of liability.** No liability for pollution damage shall attach to the shipowner if the shipowner proves that:

- (a) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
- (b) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or
- (c) the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

**Article 8. Contributory negligence.** If the shipowner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the shipowner may be exonerated wholly or partially from liability to such person.

**Article 9. Responder Immunity.** No claim for compensation for damage under these Regulations or otherwise may be made against:

- (a) the servants or agents of the owner or the members of the crew;
- (b) the pilot or any other person who, without being a member of the crew, performs services for the ship;
- (c) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
- (d) any person taking preventive measures; and
- (e) the servants or agents of persons mentioned in (c) and (d);

Whenever any of the persons listed are undertaken preventive measures, unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

**Article 10. Incidents involving two or more ships.** When an incident involving two or more ships occurs and pollution damage results therefrom, the shipowners of all the ships concerned, unless

exonerated under Article 7 or 8, shall be jointly and severally liable for all such damage which is not reasonably separable.

**Article 11. Limitation of Liability.** Nothing in these Regulations shall affect the right of the shipowner and the person or persons providing insurance or other financial security to limit liability under any applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

**CHAPTER IV**  
**INSURANCE CERTIFICATES RELATING TO LIABILITY FOR BUNKER OIL**  
**POLLUTION DAMAGE**

**Section I**  
**Application**

**Article 12. Compulsory insurance or financial security.** The registered owner of a ship having a gross tonnage greater than 1,000 registered in Guatemala shall be required to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover the liability of the registered owner for pollution damage in an amount of liability equal to the limits of liability under the applicable national or international limitation regime.

**Article 13. Appropriate Insurance Certificate.** A certificate attesting that insurance or other financial security is in force in accordance with the provisions of these Regulations shall be issued to each ship after the Authority has determined that the requirements of Article 12 have been complied with. The Authority shall establish through Legal Notice, the specific requirements, procedures and fees for the issue of the certificate referred in this Article.

**Article 14. Form of the certificate.** The certificate shall be in the form of the model set out in the annex to these Regulations and shall contain the following particulars:

- (a) name of ship, distinctive number or letters and port of registry;
- (b) name and principal place of business of the registered owner;
- (c) IMO ship identification number;
- (d) type and duration of security;
- (e) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established;
- (f) period of validity of the certificate which shall not be longer than the period of validity of the insurance or other security.

**Article 15. Blue Cards or similar documentation.** The Authority shall accept Blue Cards or similar documentation issued by a member of the International Group of P&I Associations (even if this is submitted in electronic format), when it is possible to verify the Blue Card from the relevant P&I Club's website.

The Authority shall accept a Blue Card or other similar documentation from insurance companies, financial security providers and P&I Clubs outside the International Group, only when it is able to verify the financial status and solvency of the company. For this purpose, the Authority shall require:

- (a) adequate documentation on the company's financial standing and hence solvency.
- (b) adequate documentation on approval by the relevant authority that the company is eligible to carry out insurance business in the country of the authority;
- (c) adequate documentation on reinsurance coverage on claims met by the company for liability incurred under the Bunkers Convention;
- (d) a guarantee by the company and its parent company, if one exists, that it will cover liability incurred under the Bunkers Convention and up to the limits of liability according to the LLMC 1976, as amended;
- (e) a statement to the effect that liability incurred under the Bunkers Convention due to an act of terrorism is covered; and
- (f) the rating that the insurance company and/or its reinsurers hold by an independent and internationally recognized rating agency.

**Article 16. Language of the certificate.** The certificate shall be issued in Spanish with translation into English.

**Article 17. Obligations.** The certificate shall be carried on board the ship and a copy shall be deposited with the Authority which shall keep the record of the ship's registry.

**Article 18. Prohibition of proceeding to sea without appropriate certificate.** No Guatemalan ship to which these Regulations applies shall proceed or attempt to proceed to sea unless there is in force in respect of the ship the certificate referred to in Article 13. Also, no foreign flagged ship to which Article 12 of these Regulations applies shall proceed or attempt to proceed to ports, installations or the territorial waters of Guatemala unless there is in force in respect of the ship the certificate referred to in Article 13.

## **CHAPTER V JURISDICTION**

**Article 19. Action for compensation.** Where an incident has caused pollution damage in the territory, including the territorial sea, and in the EEZ of Guatemala; or preventive measures have been taken to prevent or minimize pollution damage in such territory, including the territorial sea, or the EEZ of Guatemala, actions for compensation against the shipowner, insurer or other person providing security for the shipowner's liability may be brought only in the courts of Guatemala. The competent Court will be the Civil Court of First Instance, in accordance to the procedure established in Part II, Title I of the Civil and Commercial Procedural Code, Decree No. 107.

**Article 20. Direct action against the insurer.** Any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the registered owner's liability for pollution damage. In such a case the defendant may invoke the defences (other than bankruptcy or winding up of the shipowner) which the shipowner would have been entitled to invoke, the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained in accordance with Article 12. Moreover, the defendant may invoke the defence that the pollution damage resulted from the



willful misconduct of the shipowner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the shipowner against the defendant. The defendant shall in any event have the right to require the shipowner to be joined in the proceedings.

**Article 21. Recognition and enforcement of foreign judgements.** Any judgement given by a Court with jurisdiction which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognised in Guatemala, except:

- (a) where the judgement was obtained by fraud; or
- (b) where the defendant was not given reasonable notice and a fair opportunity to present his or her case.

Such judgement recognised shall be enforceable in Guatemala as soon as the formalities required in Part III, Chapter II, Title IV of the Civil and Commercial Procedural Code, Decree No. 107 have been complied with. The formalities shall not permit the merits of the case to be re-opened.

**Article 22. Time limits.** Rights to compensation under these Regulations shall be extinguished unless an action is brought thereunder within three years from the date when the damage occurred. However, in no case shall an action be brought more than six years from the date of the incident which caused the damage. Where the incident consists of a series of occurrences, the six-years period shall run from the date of the first such occurrence.

## **CHAPTER VI**

### **FINAL AND TRANSITORY PROVISION**

**Article 23. Transitory.** Until the State accedes to and implements the 1996 Protocol to Amend the Convention on Limitation of Liability for Maritime Claims, as amended, the following limits of liability shall apply, in respect of claims of bunker oil pollution damage:

- a) 1.51 million Units of Account for a ship with a tonnage not exceeding 2000 tons,
- b) for a ship with a tonnage in excess thereof the following amount in addition to that mentioned in a):
  - for each ton from 2 0001 to 30 000 tons, 604 Units Account;
  - For each ton from 30001 to 70000 tons, 453 Units of Account;
  - For each ton in excess of 70000 tons, 302 Units of Account.

**Article 24. Entry into force.** These Regulations shall enter into force eight days after its publication in the Official Gazette.

**JIMMY MORALES CABRERA**  
**PRESIDENT OF THE REPUBLIC**

**SANDRA ERICA JOVEL POLANCO**  
**MINISTRY OF FOREIGN AFFAIRS**

**ANNEX I**

**CERTIFICADO DE SEGURO U OTRA GARANTÍA FINANCIERA RELATIVO A LA  
RESPONSABILIDAD CIVIL NACIDA DE DAÑOS DEBIDOS A CONTAMINACIÓN  
POR LOS HIDROCARBUROS PARA COMBUSTIBLE DE LOS BUQUES**

**CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF CIVIL  
LIABILITY FOR BUNKER OIL POLLUTION DAMAGE**

**Expedido en virtud de lo dispuesto en el artículo 7 del Convenio internacional sobre  
responsabilidad civil nacida de daños debidos a contaminación por los hidrocarburos para  
combustible de los buques, 2001.**

**Issued in accordance with the provisions of Article 7 of the International Convention on Civil Liability for  
Bunker Oil Pollution Damage, 2001.**

<b>Nombre del Buque/ Name of ship</b>	<b>Número o letras distintivos/ Distinctive Number or letters</b>	<b>No. IMO de identificación del buque/ IMO Ship Identification Number</b>	<b>Puerto de Matrícula/ Port of Registry</b>	<b>Nombre y domicilio social principal completo del propietario inscrito/ Name and full address of the principal place of business of the registered owner.</b>

Se certifica que el buque arriba mencionado está cubierto por una póliza de seguro u otra garantía financiera que satisface lo prescrito en el artículo 7 del Convenio internacional sobre responsabilidad civil nacida de daños debidos a contaminación por los hidrocarburos para combustible de los buques, 2001.

This is to certify that there is in force in respect of the above-named ship a policy of insurance or other financial security satisfying the requirements of Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001.

Tipo de garantía .....

(Type of Security)

Duración de la garantía .....

(Duration of Security)

**Nombre y dirección del asegurador(es) y/o del fiador(es)**

(Name and address of the insurer(s)and/or guarantor(s))

Nombre .....

(Name)

Dirección .....

(Adress)

Este certificado es válido hasta .....

(This certificate is valid until)

**Expedido o refrendado por el Gobierno de la República de Guatemala.**

**Issued or certified by the Government of the Republic of Guatemala.**

Expedido en (issued at).....A (the).....

(Lugar/Place)

(Fecha/Date)

.....

**Dirección General de Asuntos Marítimos**

**General Directorate of Maritime Affairs**

**Ministerio de la Defensa Nacional de Guatemala**

**Ministry of National Defense of Guatemala**

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