



IMO

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**DECREE TO INCORPORATE THE INTERNATIONAL CONVENTION ON
CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE 2001, INTO
THE LEGISLATION OF THE REPUBLIC OF ECUADOR**

AND

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

**A Legislation Drafting Project submitted in partial fulfilment of the
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*To the one that has always believed in me,
my beloved father...*

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LIST OF ABBREVIATIONS

Bunkers Convention	International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001
CLC	Civil Liability Conventions for Oil Pollution Damage
1969 CLC	International Convention on Civil Liability for Oil Pollution Damage, 1969
CLC PROT 1992	Protocol of 1992 Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969
DIRNEA	Directorate of Aquatic Spaces of the Naval Force of the Republic of Ecuador
ECLAC	The Economic Commission for Latin America and the Caribbean
FUND 1971	Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971
FUND 1992	Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992
HNS Convention	International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996
IMO	International Maritime Organization
1976 LLMC	Convention on Limitation of Liability for Maritime Claims, 1976

LLMC PROT 1996	Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims, 1976
Supplementary Fund 2003	Protocol on International Oil Pollution Compensation Supplementary Fund, 2003
UNCLOS	United Nations Convention on the Law of the Sea, 1982

INTRODUCTION

For years, there was an urgent for a civil liability regime to cover pollution damage caused by spills of oil from non-tankers vessels or dry cargo vessels; this need arose from a gap in the international regime for compensation of victims, which was finally filled by the establishment of the Bunkers Convention. It can be therefore said now that with the adoption of this Convention, the framework on the liability and compensation for pollution damage has been completed and concluded by the IMO.

The final text of the Bunkers Convention was adopted by a Diplomatic Conference held from 19-23 March 2001 in the Headquarters of the IMO in London. The Conference, after discussing the details of the Convention and its three accompanying resolutions, reached an agreement to approve its content.

The Bunkers Convention entered into force on November 2008 and by the 29 February 2012 has been ratified by 64 countries which represent the 89.12% of the world tonnage.¹

However, although in the past it has been suggested to the Ecuadorian authorities to accede to the Convention, Ecuador has not done it so.

The following work seeks to advise the Ecuadorian authorities of the importance to adopt a Convention that ensure an adequate, prompt and effective compensation to persons who has suffered damage caused by oil spills, in the cases of oil pollution that are excluded by the CLC².

The following paper aims to be an introduction to the Bunkers Convention and it contains a Decree in order to implement the Bunkers Convention into the national legislation, a regulation for the issue of the compulsory insurance certificate or other financial security in respect of civil liability for bunker oil pollution damage, and as an Annex the Bunkers Convention per se.

¹ Status of conventions summary, Bunkers Convention. International Maritime Organization, 13 January 2012 <http://www.imo.org/about/conventions/statusofconventions/documents/summary_of_status.xls> visited 16 January 2012.

² Ecuador is Party of the CLC 1969 and CLC PROT 1992.

Explanatory Note

1.1 An Introduction to the Liability and Compensation Regime

Navigating on the high seas has always been considered a dangerous adventure. However, with the advance of technology, the maritime industry has improved its approach to possible risks that could be encountered on the seas. Nonetheless, accidents still occur and the consequences of those accidents could bring severe repercussions.

Tragic incidents with catastrophic consequences can be found in the history of the maritime industry. Disasters such as: the *Torrey Canyon* 1967, *Exxon Valdez* 1989, *Erika* 1999, and *Prestige* 2002, to name a few; have opened the eyes of the world to the necessity of developing rules that can be implemented by States around the world in order to determine liability and provide viable solutions.

One of the concepts that have been widely developed in international law is the concept of limitation of liability. In general, it can be said that the concept of liability has three main roles;

- a) A preventive function: this function seeks to adopt a mechanism, as a deterrent, in order to identifying potential risks in order to avoid accidents.
- b) A corrective function: “it refers to liability as a method of enforcing the law ex post facto”.³ It provides instruments to ensure the legal protection of the proprietary interest of the individual.
- c) A reparative function: the objective, it could be said, is self-explanatory. It seeks “to shift the injurious consequences of conduct in whole or in part from the victim to the author of that conduct through a compensatory arrangement”.⁴

³ Lefeber Rene, *Transboundary Environmental Interference and the Origin of State Liability*, Kluwer Law International, The Hague, 1996. p. 1.

⁴ *Ibid.*

Nowadays, there are a variety of conventions which cover the most important aspects of limitation of liability. This concept has been exceptionally important for the maritime industry. According to Martinez:

It has been generally agreed that the concept of limitation of liability is now deeply entrenched in the maritime industry... Each ...conventions carries with it its own particular approach to limitation of liability. They usually cater for issues such as the basis of liability, the right to limit liability, circumstances in which such right is to be forfeited, and in certain cases specific limitation amounts...⁵

As such, it is essential to note that the Conventions that deal with limitation of liability are interrelated; they try to cover the full range of potential liabilities that could emerge from an incident at sea. The areas that are currently covered by the conventions are:

- a) The carriage of goods by sea.
- b) Carriage of passengers and their luggage by sea.
- c) Liability and compensation for pollution damage.
- d) Liability for the removal of wrecks.

In the specific case of liability and compensation for pollution damage, several conventions have been drafted in order to cover different sources of maritime pollution such as: The CLC 1969, CLC PROT 1992 and the FUND 1971, FUND 1992, and the Complementary Fund 2003, the HNS Convention and its protocol 2010, the Bunkers Convention, and finally the 1976 LLMC and LLMC PROT 1996. The two latter provide a 'global limitation system'.

The conventions provide an accurate legal framework that limits the liability of the shipowner and ensures adequate compensation to the victims that have been affected by damage pollution caused by vessels.

⁵ Martinez Gutierrez, N. A.: Limitation of Liability in International Maritime Conventions: the relationship between global limitation conventions and particular liability regimes, Routledge, London/New York, 2011, p. 2 (hereinafter Martinez Gutierrez).

1.2 The Importance of the Bunkers Convention for Ecuador

Pollution of the sea is an issue that has to be taken seriously. Although there are various sources of maritime pollution, oil spills represent the most dramatic, abrupt and devastating of all. When oil is mixed with water the composition changes and becomes in what is known as mousse, which is a thick substance that clings to everything that gets in contact to it, causing serious harm to the maritime environment.

In cases where bunker oil is spilled or leaked into the ocean, the speed with it spreads, because of the wind and currents, is alarming. A gallon of oil is able to create an oil slick up to a couple of acres in size; as a matter of fact, it has been seen that the BP oil slick in three days can spread over 580 squares miles,⁶ and to clean up the sea could have an estimated cost of 100 million and 200 million dollars.⁷

Ecuador has one of the most important ports of South America. The port of Guayaquil is in the top ten ranking of the most important ports of Latin America and the Caribbean's according to the ECLAC.⁸ In the same way "a British publication in late 2011 included the port of Guayaquil in the top 100 worldwide".⁹ Therefore it may be correct to point that the traffic of vessel in the Ecuadorian territorial waters¹⁰ is considerable and the country is not exempt from possible catastrophes which could end up with oil spilled affecting its territory.

For example, it is impossible to delete from the memory of the Ecuadorians the images of the disaster that occurred on January 16th 2001 which involved the Ecuadorian-registered tanker *Jessica*. The vessel which ran aground on the archipelago's easternmost island of San Cristobal (Galapagos), was carrying 160,000 gallons of diesel and 80,000 gallons

⁶ Effects of oil spill, Green Living; originally published in 2007 updated in 2010
<<http://www.greenlivingtips.com/blogs/164/Effects-of-oil-spills.html>> visited on 9 January 2012.

⁷ The Impact of the oil spill, Greenline Organization,
<http://www.greenline.org.lb/new/pdf_files/fact_sheet_3.pdf> visited on 9 January 2012.

⁸ The ranking was published by the Economic Commission for Latin America (ECLA) -the Spanish acronym is CEPAL. The information has been taken from an article published by: "El Universo", on 27 April 2011
<<http://www.eluniverso.com/2011/04/27/1/1356/puerto-local-10-principales.html>> visited on 3 of February 2012.

⁹ "Ecuador: U.S. \$ 67 Million to Expand Port of Guayaquil", Emerging Terrains News, Published on 21 February 2012,
<<http://emergingterrains.com/investmentnews/compare/ecuador-u-s-67-million-to-expand-port-of-guayaquil/>> visited on 5 March 2012.

¹⁰ Ecuador has proclaimed a 200-mile of sovereignty and exclusive jurisdiction, according the Santiago Declaration 1952.

bunker fuel (IFO) from which it was confirmed that almost all the cargo of diesel and bunker fuel was spilled into the sea as little as 1000 gallons remained in the ship.¹¹

The incident, categorized by the press as ‘the Galapagos worst disaster’,¹² was the fatal result of a set of human errors. A claim was filed by the Galapagos National Park and the High Court quantified the damages for \$10M for the victim. The *Jessica* case has been considered as one of the most tragic and largest spill of oil around the world.¹³

As a protective measure Ecuador has decided to become Party of the IMO Conventions relating to limitation of liability and compensation for oil pollution damage.¹⁴ However, there is a gap in the case of pollution damage caused by spills of bunkers from non-tankers that have to be observed; because, as it has been mentioned previously, bunker oil is one of the most expensive and difficult substances to clean up from the sea, leaving the country unprotected against this possibility is untenable.

The Bunkers Convention, thus “plugs a gap in the pollution legislation so that all substances which may escape from a ship are now covered by a liability and compensation regime”.¹⁵ In fact, the Convention was created 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”.¹⁶

Therefore and bearing in mind the mentioned gap in the Ecuadorian legislation regarding bunker oil pollution damage; the following is an analysis of the main provisions of the Bunkers Convention. It is hoped that this analysis will further clarify the urgent need for legislation covering this field of law.

¹¹The Jessica Oil Spill, <<http://www.galapagos.to/TEXTS/JESSICA.HTM>> visited on 7 January 2012.

¹² Oil Spill Galapagos Island “worst disaster”, The Guardian, Monday 22 January 2001, London-UK, <<http://www.guardian.co.uk/environment/2001/jan/22/oilspills.endangeredspecies>> visited on 7 January 2012.

¹³ Ibid.

¹⁴ Ecuador is Party of the CLC 1969, CLC PROT 1992 and it is Part of the FUND 1992.

¹⁵ P. Griggs, ‘A Busy Schedule for International Maritime Law’, 4(1) S. &T.L.I (2003) 29 at 30. In this point see also Martinez Gutierrez, p. 158.

¹⁶ International Convention on Civil Liability for Bunker Oil Pollution Damage (BUNKER). International Maritime Organization, London-UK, <<http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-on-Civil-Liability-for-Bunker-Oil-Pollution-Damage-%28BUNKER%29.aspx>> visited on 14 January 2012.

1.3 The Bunkers Convention

The Convention finds its origins in the CLC and the HNS Convention and is designed to work directly with the LLMC Convention. With the adoption of the Bunkers Convention, the framework on the liability and compensation for pollution damage appears to be completed.¹⁷ It establishes a specific system of limitation of liability by covering “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”.¹⁸

1.3.1 Scope of Application

According to the text, the territorial application of the Convention would operate when pollution damage is caused in the territory of the country, including the territorial sea and in the exclusive economic zone¹⁹ of a State Party in order to prevent or minimize such damage. One of the advantages of the Convention is that

...the actual location where the incident causing the damage occurs is irrelevant. The Convention applies even if the incident occurs on the high seas, provided that the pollution damage materializes in one of the geographical areas listed in Article 2 [of the Convention].²⁰

In other words, the location of the accident is irrelevant when the pollution reaches the 200 nautical miles of the State Party.

1.3.2 Definitions in the Bunkers Convention

As it has been mentioned, the Bunkers Convention is broader than the CLC in its definitions, allowing the Convention to be applied to cases in which CLC fails to operate; Article 1 of the Convention provides certain definitions that are important to determine the applicability of the Convention.

¹⁷ Martinez Gutierrez, p. 158.

¹⁸ Article 1(5), Bunkers Convention.

¹⁹ In the cases when the exclusive economic zone has not being declared, the application cannot exceed the 200 nautical miles.

²⁰ Martinez Gutierrez, p. 159.

1.3.2.1 Ship

The definition of ship has been given in other conventions such as CLC PROT 1992. However, in the Bunkers Convention the definition of “ship” has been extended, recognizing “any seagoing vessel and seaborne craft, of any type whatsoever”;²¹ yet, even the expression “any type whatsoever” is used in the definition, exceptions are recognized in Article 4 of the Convention. The Article clearly excludes “warships, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on Governmental non-commercial service”.²² Nevertheless, in case where a State decides to apply the Convention to its warships or other ships, it has to notify the Secretary General specifying the terms and conditions of such application.

It is also important to emphasises The Bunkers Convention do not apply to oil tankers, they are exclude of the scope of application of the Convention. The exception is found also in the text of Article 4 when states that,

...this Convention [Bunkers 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.

1.3.2.2 Shipowner

It is defined by the Convention as “the owner”; including the registered owner,²³ bareboat charterer, manager and operator of the ship. This definition is broader than the one provided by the CLC, in which “owner” has been defined as “the person or persons registered as the owner of the ship”.²⁴ Art 1(4), on the other hand, contemplated the case in which a ship owned by a State an operated by a company which in that State is registered as the ship’s operator, “the registered owner” shall meant such company.

²¹ Article 1(1), Bunkers Convention.

²² Article 4(2), Bunkers Convention.

²³ In case of absence of registration it would be considered the person or persons owning the ship.

²⁴ Article 1(3), CLC PROT 1992.

1.3.2.3 Bunker Oil

The definition of the bunker oil is probably one of the most important features of the Convention in order to distinct its scope of application and the type of loss that it covers. Thus, “Bunker oil” covers “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”.²⁵

Therefore, the criterion for determining whether the relevant oil falls under the Bunkers Convention is one of intention- the oil must be ‘used or intent to be used for the operation or propulsion of the ship’.²⁶

The definitions given by the Bunkers Convention generate a broader scope of application in contrast with the one provided by the CLC 1969 and CLC PROT 1992.

Unlike the definition of ‘oil’ in the 1992 CLC, the definition of ‘bunker oil’ is not limited to persistent oils and may include lighter fuels as marine diesels and lubricating oils.²⁷

1.3.2.4 Pollution Damage

The definition is given in Art 1(9). It is important to note that the Convention only applies in cases in which the vessel is carrying bunker oil as fuel used for the operation or propulsion of a ship, and that fuel at the end is the cause of the pollution.

The Convention expressly excludes damage as defined in the 1969 CLC and the CLC PROT 1992. However, as Martinez correctly mentions, the Convention does not excludes damage as defined in the HNS Convention, therefore it seems possible to point that both Conventions (Bunkers Convention and HNS Convention) can apply simultaneously in the event that Bunker and Chemical substances are the cause of the pollution.

²⁵ Article 1(5), Bunkers Convention.

²⁶ Martinez Gutierrez, p. 160.

²⁷ As it is cited by Martinez Gutierrez, p. 160.

In cases where the damage was caused by explosion and fire, the Convention will not apply. On the other hand, “if there is a bunker oil spill following an explosion and fire, the resulting pollution damage would be covered by the Convention”.²⁸

1.3.3 Strict Liability of the Shipowner

The case of *Rylands v. Fletcher* is often referred as the milestone of the concept of strict liability in law,²⁹ although the case does not deal with maritime law, inaugurates the concept of strict liability that is nowadays frequently used in cases of marine pollution, in the limitation of liability regime. The whole idea after the concept is that “...where a hazardous activity [is] involved... the party who created the risk and gained some economic benefit from that activity should bear the risk [that the activity brings within]”.³⁰

The concept was an important innovation of the 1969 CLC and because of its effectiveness has been developed and used in other limitation of liability conventions.

In the particular case of Bunkers Convention the shipowner is strictly liable for pollution damage as defined by the Convention. Nevertheless, Still, Article 3 specifies exceptions under which, in cases proved by the shipowner, no liability will attach to him:

- the damage resulted from an act of war, hostilities, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
- the damage was caused by an act or omission done with intent to cause damage by a third Party; or
- The damage was wholly caused by the negligence of any Government or other authority responsible.

²⁸ Ibid.

²⁹ [1986] Lloyds' Rep.3 H.L. 330. See in this respect also Zhu Ling, *Compulsory Insurance and Compensation for Bunkers Oil Pollution Damage*, Springer –Verlag Berlin Heidelberg, New York, 2007, p. 88.

³⁰ Ibid.

1.3.4 Exclusions

As it has been previously mentioned, according to the text in Article 4(1), the Convention does not apply to pollution damage covered by the CLC, meaning that,

... [The Convention] will not apply to bunker oil spill from a laden tanker even if the relevant State is a Party to the Bunkers Convention but not to the 1969 CLC or 1992 CLC. The Same scenario would follow if the State is a Party to the 1969 CLC – but not to the 1992 CLC- and the tanker in question is on ballast and has residues of oil from the preceding voyage. The reason for this is that the 1969 CLC applies only to ships actually carrying oil as cargo and the Bunkers Convention would only apply because the said damage would fall within the meaning of the 1992 CLC.³¹

Other exclusion is found in Article 4(2). The Convention does not cover pollution damage caused by warships or ships on government non-commercial service. In the event that the State Party wants to apply the Convention in these cases, the State Party should follow the requirements contemplated in Article 4(3) and (4). However, it is important to remark that “where State owned vessels are used for commercial purposes the Convention applies including the jurisdiction provision of Article 9”.³²

1.3.5 Responder Immunity

One of the subjects of great discussion in the case of the Bunkers Convention is that the Convention does not give any kind of immunity from prosecution for pollution damage, to ‘responders’³³ in the proper performance of their job.³⁴

The gap left by the Convention in this matter is a crucial issue that needs to be considered, since “this legal protection is important because it encourages individuals

³¹ M. Jacobsson, ‘Bunkers Convention in Force’, (2009) 15 JIML 21 at 24-5. In this point see also Martinez Gutierrez. p. 162.

³² Article 4(4), Bunkers Convention.

³³ Such as Salvors.

³⁴ The New Bunker Convention, Gard News. Gard Services A.S.

<http://www.gard.no/ikbViewer/page/iknowbook/ajax/view?p_document_id=53290> Arendal – Norway, 28 of January 2012.

to take measures to prevent or minimize pollution damage without fear of potential liability”;³⁵ which is the spirit of the Convention.

Therefore, the omission was recognized and in 2001 the Diplomatic Conference adopted a Resolution that exhorts States, to take into consideration the need to establish a legal provision for the protection to “persons taking reasonable measures to prevent or minimise the effects of oil pollution”.³⁶ Conversely, the Resolution also makes it clear that provisions would not apply in the specific case that “...the liability in question resulted from their personal act or omission, committed with the intent to cause damage, or with recklessness and with knowledge that such damage would probably result”.³⁷

Other conventions such as CLC and HNS Convention, include protection in the form of Responder Immunity. As such, in the Resolution, the Conference, recommended that States Parties to adopt in their domestic legislation the provision based on the model provided by the HNS Convention.

1.3.6 Limitation of Liability

The Bunkers Convention follows the spirit of the Civil Limitation of Liability Regime, as a matter of fact the Convention recognize “the importance of establishing strict liability for all forms oil pollution which is linked to an appropriate limitation of the level of that liability”.³⁸ Hence, under the Convention the claims or compensation for pollution damage can be brought directly against the insurer.

However, one of the main challenges of the applicability of the Convention is to determine the ship owner’s limitation of liability, since this subject is not covered by the text of the Convention. Nonetheless, Article 6 of the Convention specifically relies on “any applicable national or international regime”, providing to the State Party the freedom to choose between regulate the subject under the limits impose by the 1976

³⁵ Martinez Gutierrez N. A. ‘The Bunkers Convention 2001: Challenges for its Implementation’, Paper presented at the round-table ‘EU Maritime Pollution and the (Northern) Adriatic’, Organized by the Maritime Law Association of Slovenia (MLAS), (Slovenia), 20 May 2011, p.5 (hereinafter Martinez Gutierrez, ‘The Bunkers Convention’).

³⁶ Resolution III, Bunkers Convention.

³⁷ Ibid.

³⁸ Preamble of the Bunkers Convention.

LLMC or LLMC PROT 1996 (if it is applicable), and national legislation observing as minimum the amounts stipulated by the 1976 LLMC or LLMC PROT 1996. On the other hand it seems to be the case that "... claimants for bunker- fuel pollution damage will have to compete with other property claimants in the same incident".³⁹

1.3.7 Compulsory Insurance or Financial Security

The compulsory insurance required by Article 7 is not a novelty of the Bunkers Convention; as a matter of fact, is other of the important features that was successfully introduce by the 1969 CLC and it has been reproduce with really good results also in most of the liabilities conventions Convention.

According to the Convention, the registered owners of ships carrying more than 1,000 gross tons of bunker oil are obliged to maintain insurance of other financial security. The reason for this pre-requisite is to ensure financial coverage for ships that have the potential to cause major pollution disasters in case of an incident.

Some of the requisites under Article 7 include the fact that:

... a certificate must be issued by the State Party attesting that such insurance is in force. This certificate will be issued by the State Party after the shipowner submits a 'Bunkers Convention Blue Card'- issued by an insurer-evidencing that there is in place insurance which meets the requirements of the Convention.⁴⁰

The Article is not exempt from some controversies. According to the text of Article 7(1), the ships that are required to have a compulsory insurance are only those registered in States which are Party to Convention. The issue arises in the hypothetical case that ships with low-standards might be registered in States which are not Party to the Convention. According to Ling Zu, the solution to this problem can be found in Article 7(12) of the Bunkers Convention, which provides that:

...each State Party shall ensure that, under its national law, insurance or other financial security is in force in respect of any ship having a gross tonnage greater than 1,000, wherever registered, entering or leaving a port in its territory, or leaving an offshore facility in its territorial sea [...]

³⁹ Zhu, Ling, p. 33.

⁴⁰ Martinez Gutierrez, p. 166.

According to this paragraph, ships having a gross tonnage greater than 1000, whether registered in a State Party or not, shall take out the same level of insurance in order to enter the port of a State Party. Nevertheless, if ships registered in a non-State Party are not intended to transport into the territory of a State Party, it is under their discretion to purchase insurance [or not].⁴¹

Martinez goes further, mentioning the debate about whether it is applicable or not, for tankers, to acquire the Bunkers Convention Certificate. In his opinion

...it must be recalled that the definition of 'ship' in the Bunkers Convention includes tankers. In addition, the Bunkers Convention covers bunker spills of hydrocarbon mineral oils whether persistent or not [...] Finally, if a combination ship in ballast does not have any residues of persistent oil carried a cargo in the preceding voyage, such ship would not fall within the 1992 CLC definition of 'ship' and would thus not be covered by that Convention. Therefore, although the procurement of a Bunkers Convention certificate would impose additional administrative burdens on tankers, it is argued that the Bunkers Convention requirement of obtaining the relevant certificate also extends to tankers.

Nevertheless, the compulsory insurance has been proved through the years to be an efficient solution for the purpose of guarantee a prompt and effective compensation to pollution victims.

1.3.8 Time Limit

It needs to be considered that the spirit of the Convention is to provide the victims of pollution damage an adequate, prompt and effective compensation therefore the convention has set up a time limit in its Article 8.

The article establishes a time limit to bring an action which is within three years from the date when the damage occurred and no more than six years from the date of the incident that caused the damage took place. Article 8 goes a little bit further and determines that in cases in which the incident consist of a series of occurrences, the six-period shall run from the date of the first such occurrence.

The terms shall be strictly observed otherwise the right to claim compensation would be extinguished.

⁴¹ Zhu, Ling. p. 34.

1.3.9 Jurisdiction

A State Party to the Bunkers Convention is entitled to assume jurisdiction for pollution damage occurred in its waters. Moreover, even though the event has not taken place in its waters, the State Party is allowed to take preventive measures in cases in which the incident becomes a threat for the environment of the Country.

Nevertheless, according to Article 9 of the Convention when an incident has caused a pollution damage in the territory of two State Parties or more, and preventive measures have been taken in order to prevent or minimise the damage in such territory 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 to the Convention. However, the Convention demands a reasonable notice to be given for the action against the defendant.

1.3.10 Recognition and Enforcement of Judgments

Under Article 10(1) it is compulsory for countries that are Parties to the Convention to accept any decision provided by a competent Court. Nonetheless, there are also exceptions contained in the same Article in which the decision of the Court would not be recognized:

- Where the judgment was obtained by fraud; or
- Where the defendant was not given reasonable notice and a fair opportunity to present his or her case.⁴²

⁴² Article 1(a)(b), Bunkers Convention.

1.4 Resolutions Adopted by the 2001 Diplomatic Conference

In conjunction with the Convention, three Resolutions were adopted as well for the Conference:

1.4.1 Resolution on Limitation of Liability

The reason for such resolution is that “It has been suggested that there exists great uncertainty as regards limitation of liability”.⁴³ Therefore, the intention of this Resolution is to ensure homogeneity in the limitation rules regulating the liability of liability of bunker-oil pollution. Consequently, the Convention urges all States that have not yet done so to ratify or accede to the Protocol of 1996 to amend the LLMC Convention:⁴⁴ in that way “[they] are not only ensuring a proper implementation of the Convention but also promoting the harmonization of international maritime law in this area”.⁴⁵

1.4.2 Resolution on Promoting Technical Co-operation

This Resolution promotes the technical co-operation of all IMO Member States, in co-operation with IMO, other interested States, competent international or regional organizations and industry programs, to promote and provide directly, or through IMO, support to States that request technical assistance for:

- a) The assessment of the implications of ratifying, accepting, approving or acceding to and complying with the Bunkers Convention;
- b) The development of national legislation to give effect to the Bunkers Convention;

⁴³ Zhu Ling, p. 45.

⁴⁴ Which, comparing with the 1976 Convention, has a higher amount of compensation payable in the event of an incident.

⁴⁵ Martinez Gutierrez, ‘The Bunkers Convention’, p. 13.

- c) The introduction of other measures for, and the training of personnel charged with, the effective implementation and enforcement of the Bunkers Convention.

1.4.3 Resolution on Protection for Persons Taking Measures to Prevent or Minimise the Effects of Oil Pollution

The Resolution strongly suggest to the States that when they are implementing the Convention in their national legislation to observe the necessity to introduce legal provision to protect individuals, taking reasonable measures to prevent or minimize the effects of bunker oil pollution. It also exhorts the importance of filling the gap left by the Convention in the subject of responder immunity. Hence, the Resolution advises the Member States to consider the relevant provisions of the International Convention on Liability and HNS Convention, as a model for their legislation.

1.5 Recommendation

As it has been mentioned before, the limitation of liability Conventions are interrelated. This is demonstrated by the fact that Bunkers Convention was drafted to lean on other conventions such as the LLMC Convention, as it is recommended in Article 6, in order to be applicable. For this reason, it is advisable to also become a Party to the LLMC Convention in order to complete the whole framework of liabilities and compensation regime.

Meanwhile, the limits will be regulated by decree in a transitory article until Ecuador becomes Party to the LLMC Convention (if it is the case).

1.6 Implementation of the Convention into the Ecuadorian Legislation

Ecuador follows the monist system of incorporation of international law, meaning that once the Convention is ratified it would be considered part of its municipal law.

The 2008 Ecuadorian Constitution provides the mechanism to incorporate the Convention into its legislation. Article 147 deals with the attributions and duties of the President of the Republic; granting, in subsection 10, the power “...to sign and ratify international treaties...” The mentioned article is related to Article 418 that explains the procedure in ratifying treaties and other international instruments

Article 418: The President is responsible for signing or ratifying treaties and other international instruments.

[the president has the duty] To issue the regulations that are needed to enforce laws, without infringing them or altering them, as well as those that are required for the sound functioning of the administration.

The President of the Republic shall inform the National Assembly immediately of all the treaties he/she signs, with a precise description of its nature and content. A treaty can only be ratified for its subsequent clearance or deposit, ten days after the Assembly has been notified of it.⁴⁶

On the other hand, Article 419 mentions the circumstances in which the prior approval of the National Assembly is needed in order to ratify or denounce an international treaty. However, none of the cases listed by Article 419 apply to the Convention; therefore the prior approval of the National Assembly is not required.

Having said that, after the ratification made by the President, or one of his delegates, and the pertinent notification to the National Assembly; the Convention will be published in the Official Registry of Ecuador and become part of the legislation of the country.

⁴⁶Ecuadorian Constitution 2008.

**Decree to Incorporate the International Convention on
Civil Liability for Bunker Oil Pollution Damage, 2001 into
the Legislation of the Republic of Ecuador**



Republic of Ecuador

Decree to Incorporate the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 into the Legislation of the Republic of Ecuador

No. xxx

RAFAEL CORREA DELGADO

Constitutional President of the Republic of Ecuador

The President of the Republic of Ecuador, in exercise of the powers conferred upon him by Article 418 of the Ecuadorian Constitution hereby,

DECREES:

Article1: The Republic of Ecuador hereby ACCEDES to the International Convention on Civil Liability for Bunker Oil Pollution Damage.

Article2: In accordance with Article 6 of the Convention on Civil Liability for Bunker Oil Pollution Damage, shipowners and persons providing insurance or other financial security are hereby authorised to limit their liability.

Pending the accession by Ecuador to the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976, any liability incurred under this Decree and the Convention ratified herein shall be limited as follows:

- (a) 167,000 Units of Account for a ship with a tonnage not exceeding 500 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 501 to 30,000 tons, 167 Units of Account;
 - For each ton from 30,001 to 70,000 tons, 125 Units of Account; and
 - For each ton in excess of 70,000 tons, 83 Units of Account.



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A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

The limits of liability determined in accordance with this Article shall apply to the aggregate of all claims which arise on any distinct occasion.

Article 3: No claim for compensation for damage under the Bunkers Convention 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 charterer (howsoever described, including a bareboat charterer), manager or operator of the ship;
- (d) Any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
- (e) Any person taking preventive measures; and
- (f) The servants or agents of persons mentioned in (c), (d) and (e).

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.

Nothing in this Convention shall prejudice any existing right of recourse of the owner against any third Party, including, but not limited to, the shipper or the receiver of the substance causing the damage, or the persons indicated in the paragraph 1.

Article 4: This Decree shall enter into force upon its publication in the Official Registry.

Issued in The Government Palace, Quito _____(date) Ecuador.

**Regulation for the Issue of the Compulsory Insurance
Certificate or Other Financial Security in Respect of Civil
Liability for Bunker Oil Pollution Damage**



Republic of Ecuador

Regulation for the Issue of the Compulsory Insurance Certificate or Other Financial Security in Respect of Civil Liability for Bunker Oil Pollution Damage

Article 1: The registered owner of a ship having a gross tonnage greater than 1000 registered in Ecuador 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 in accordance with the Decree No. xxx.

Article 2: A certificate attesting that insurance or other financial security is in force in accordance with the provisions of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 shall be issued to each ship after the Directorate of Aquatic Spaces of the Naval Force of the Republic of Ecuador (hereinafter DIRNEA) has determined that the requirements stipulated in Article 1 of this Regulation have been complied with. This certificate shall be in the form of the model set out in the annex to this Regulation 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.



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Article 3: The institution authorized to issue the Certificates in accordance with Article 2 of the present law will be the DIRNEA.

The DIRNEA is authorized, as well, to withdraw the Certificates in the case that the circumstances mentioned in this Regulation are unfulfilled.

Article 4: The certificate shall be in Spanish.

Article 5: The certificate shall be carried on board the ship and a copy shall be deposited with the DIRNEA.

Article 6: An insurance or other financial security shall not satisfy the requirements of this section 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 Article 2 of this Regulation, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in Article 3 of this part, unless the certificate has been surrendered to the DIRNEA 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.

Article 7: The DIRNEA shall, subject to the provisions of this section, determine the conditions of issue and validity of the certificate.

Article 8: Nothing in this Regulation shall be construed as preventing Ecuador from relying on information obtained from other State Party or the Organization or other international organizations relating to the financial standing of providers of insurance or financial security for the purposes of this Regulation.

Article 9: Certificates issued or certified under the authority of a State Party shall be accepted by the DIRNEA for the purposes of this Regulation and shall be regarded by the



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DIRNEA 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. The DIRNEA may at any time request consultation with the issuing or certifying State Party should it believe that the insurer or guarantor named in the insurance certificate is not financially capable of meeting the obligations imposed by this Regulation.

Article 10: No ship flying the flag of Ecuador, shall operate at any time unless a certificate has been issued and in accordance with Article 2 or Article 12 of this Regulation.

Article 11: The DIRNEA shall ensure that any ship wherever registered having a gross tonnage greater than 1000 has insurance or any other financial security in force, upon entering or leaving any of the ports in its territory, or arriving at or leaving an offshore facility in its territorial sea.

Article 12: The provisions mentioned in this Regulation shall not be applicable to ships owned by a State that do not maintain insurance or other financial security. However, ships that are owned by the Republic of Ecuador shall carry a certificate issued by the DIRNEA stating that the ship is owned by the State of Ecuador and that the ship's liability is covered within the limit prescribed in accordance with Article 1 of this Regulation. Such a certificate shall follow as closely as possible the model prescribed by Article 2 of this Regulation.

Article 13: This Regulation shall enter into force upon its publication in the Official Register.



Republic of Ecuador

Annex “A”

CERTIFICADO DE SEGURO U OTRA GARANTIA FINANCIERA RELATIVO A LA RESPONSABILIDAD CIVIL POR DAÑOS DEBIDOS A CONTAMINACION 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

CERTIFICADO EMITIDO POR LA DIRECCION NACIONAL DE ASUNTOS ACUATICOS DE LA REPUBLICA DELECUADOR

Nombre del Buque Name of Ship	Número o Letras distintivos Distinctive Number of Letters	No. IMO de Identificación del Buque IMO Ship Identification Number	Puerto de Matricula Port of Registry	Nombre y Domicilio Social Principal Completo del Propietario Inscrito Name and Full Address of the Principal Place of Business of the registered owner

El infrascrito certifica que el buque aquí nombrado está cubierto por una póliza de seguro u otra garantía financiera que satisfice los requerimientos de la Resolución No..... y el Artículo 7 del Convenio Internacional sobre responsabilidad Civil Nacida de Daños Debidos a Contaminación por los Hidrocarburos para Combustible de los Buques, 2001.

The undersigned certifies that the above- mentioned vessel is covered by an insurance or by another fulfilling the requirements under Resolution No..... and Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001.



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Tipo de Garantía _____
(Type of Security)

Duración de la Garantía _____
(Duration of Security)

Nombre y Dirección del Asegurador (de los aseguradores) y (o) del Fiador (de los Fiadores).
Name and Address of the Insurer(s) and/ or Guarantor(s)

Nombre _____
Name

Dirección _____
Address

Este Certificado es Válido hasta: _____
This Certificate is Valid Until

EL CERTIFICADO ES EXPEDIDO O VISADO POR EL GOBIERNO DE:
THE CERTIFICATE IS ISSUED OR CERTIFIED BY THE GOVERNMENT OF

ECUADOR

Expedido en (issued at) _____
Lugar(Place)

A (the) _____
Fecha(date)

Dirección General de Asuntos Acuáticos

**Annex I: International Convention on Civil Liability for
Bunker Oil Pollution Damage, 2001**



Republic of Ecuador

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,



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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.



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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:



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- (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



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- (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.



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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



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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



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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.



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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. 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.



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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.



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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



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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



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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.



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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.



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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.



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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.



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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.
