



**IMO**  
**INTERNATIONAL MARITIME LAW INSTITUTE**  
Established under the auspices of the International Maritime Organization  
A specialized agency of the United Nations



**INCORPORATION OF THE  
INTERNATIONAL CONVENTION ON CIVIL  
LIABILITY FOR BUNKER OIL POLLUTION  
DAMAGE, 2001 INTO THE LAWS OF  
URUGUAY**

**A Legislation Drafting Project submitted in partial fulfillment of the  
requirements for the award of the Degree of Master of Laws (LL.M.)  
in International Maritime Law at the IMO International Maritime  
Law Institute**

**Submitted By: María Victoria Zorrilla (Uruguay)**

**Supervisor: Prof. Dr. Norman Martínez**

**Academic Year 2017-2018**

# ACKNOWLEDGMENT

First of all, I am deeply indebted to the Nippon Foundation, who gave me the opportunity to study in the IMO-International Maritime Law Institute.

I would like to express heartfelt thanks to my supervisor, Associate Professor Dr. Norman Martínez for his kind assistance, attention and patience.

I would also like to extend my appreciation to faculties and staffs of the IMO-International Maritime Law Institute.

I wish to thank Admiral Carlos Abilleira, current Chief Commander of the Uruguayan Navy, who trusted in me and nominated me to study at IMLI.

Last but not least, I wish to extend my deepest love to Horacio and my parents for their daily support.

# LIST OF ABBREVIATIONS

<b>Bunkers Convention</b>	International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001
<b>BIMCO</b>	Baltic and International Maritime Council
<b>CGP</b>	Código General del Proceso (General Procedural Code)
<b>CLC</b>	Civil Liability Conventions for Oil Pollution Damage
<b>CLC 69</b>	International Convention on Civil Liability for Oil Pollution Damage, 1969
<b>PROT 92</b>	Protocol of 1992 Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969
<b>CMI</b>	Comite Maritime International
<b>DIRME</b>	Directorate of Registry and Merchant Shipping (Dirección Registral y de Marina Mercante)
<b>FUND 71</b>	Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971
<b>FUND 71/ PROT 92</b>	Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992
<b>GRT</b>	Gross tonnage
<b>HNS CONVENTION</b>	International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996
<b>IAPH</b>	International Association of Ports and Harbors
<b>ICS</b>	International Chamber of Shipping
<b>IG</b>	International Group of P&I Clubs
<b>IMO</b>	International Maritime Organization
<b>ITOPF</b>	International Tanker Owners Pollution Federation
<b>LLMC 76</b>	Convention on Limitation of Liability for Maritime Claims, 1976
<b>1996 PROTOCOL</b>	Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims, 1976
<b>MEPC</b>	Marine Environment Protection Committee

<b>NGOs</b>	Non-governmental organizations
<b>OCIMF</b>	Oil Companies International Marine Forum
<b>TEUs</b>	Twenty Foot Equivalent Unit
<b>U.R.</b>	Resettable Unit (Unidad Rejustable)

# TABLE OF CONTENTS

Acknowledgment	I
List of Abbreviations	II
Table of contents	III
<b>Part I</b>	1
Explanatory note on Bunkers Convention	2
1.1.- Introduction	2
1.2.- Background	3
1.3.- The Bunkers Convention	3
<i>1.3.1.- Definitions</i>	3
<i>1.3.2.- Scope of Application and Exclusion</i>	5
<i>1.3.3.- Liability of the Shipowner</i>	6
<i>1.3.4.- Limitation of Liability</i>	8
<i>1.3.5.- Compulsory Insurance or Financial Security</i>	9
<i>1.3.6.- Time Limits</i>	12
<i>1.3.7.- Jurisdiction, Recognition and Enforcement</i>	12
1.4.- Resolution adopted by the 2001 Diplomatic Conference	13
<i>1.4.1.- Resolution on Limitation of Liability</i>	13
<i>1.4.2.- Resolution on Promoting Technical Cooperation</i>	13
<i>1.4.3.- Resolution on Protection for Persons Taking Measures to Prevent or Minimize the Effects of Oil Pollution</i>	13
1.5.- Resolution on Issue of Bunkers Certificate to Ships that are also required to Hold a CLC Certificate	14
1.6.- The Implementation of the Bunkers Convention into the Uruguayan Law	14
<i>1.6.1.- Why it is Important?</i>	14
<i>1.6.2.- How to Implement it?</i>	15
	IV

<i>1.6.2.1.- Limitation of Liability</i>	16
<i>1.6.2.2.- Compulsory Insurance of Financial Security Certificate</i>	16
<i>1.6.2.3.-Jurisdiction</i>	16
<i>1.6.2.4.- Responder Immunity</i>	17
<i>1.6.2.5.- Recognition and enforcement</i>	17
<b>Part II</b>	18
2.1.- Law promulgating the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001	19
2.2.- Instrument of Accession of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 by the Eastern Republic of Uruguay	37
2.3.- Liability for Bunker Oil Pollution Damage Regulations	38

# **PART I**

## **EXPLANATORY NOTE**

**LAW ON THE ACCESSION OF THE EASTERN REPUBLIC OF  
URUGUAY TO THE INTERNATIONAL CONVENTION ON CIVIL  
LIABILITY FOR BUNKER OIL POLLUTION DAMAGE, 2001**

## EXPLANATORY NOTE

Law No. xxx, Date xx.xx.2018 on the Accession of the Eastern Republic of Uruguay to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention)

### 1.1.- INTRODUCTION

The oil spills at sea caused by the ships "*Torrey Canyon*", "*Amoco Cadiz*", "*Exxon Valdez*", "*Erika*", among others, have aroused deep concern in the maritime community, leading to the International Convention on the Civil Liability for Oil Pollution Damage adopted in Brussels in 1969 and the International Convention on the Creation of a Fund for Compensation for Oil Pollution Damage adopted in Brussels in 1971, both modified by the protocols of 1976 and 1992, both Conventions ratified by Uruguay with their respective amending protocols through the Law N° 16.820 dated April 23, 1997.

These instruments form an international system of compensation for damages caused by persistent oil spills from tankers, which consist of two levels of liability. The first level corresponds to the CLC 69 / PROT 92 system, which focuses the liability on the shipowner. The second level is the FUND 71 / PROT 92 system, whose compensation is in charge of the International Fund of 1992. Finally, there is a third supplementary level which is in charge of the 2003 Fund, not ratified by Uruguay.

But neither the CLC 92 nor the FUND 92 regulate the liability for bunker oil pollution damage caused by ships other than tankers. Consequently, to fill such gap, the IMO developed the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (known as Bunkers Convention), destined to govern such liability. This Convention entered into force on November 21, 2008, having been ratified by 87 countries that represent the 92.57 % of the World Tonnage<sup>1</sup>.

---

<sup>1</sup> <http://www.imo.org/en/About/Conventions/StatusOfConventions/Documents/StatusOfTreaties.pdf>, accessed on 07 February 2018.



## 1.2.- BACKGROUND

Accordingly to Martinez, “the origin of Bunkers Convention...may be traced to an Australian proposal submitted first to the thirty-sixth session of IMO’s MEPC in 1994 and to the Legal Committee’s seventy-third session in 1995”<sup>2</sup>.

The Bunkers Convention was adopted by the IMO at a diplomatic conference in 2001 with the aim of improving the means by which claimants would be able to recover costs incurred as a result of pollution from bunkers<sup>3</sup>, whether those costs are incurred as a result of damage caused by the pollution or in responding to the pollution incident<sup>4</sup>.

## 1.3.- THE BUNKERS CONVENTION

The Bunkers Convention is a clear and simple Convention that consists of only 19 articles, among which we can highlight:

### 1.3.1.- Definitions

Article 1 provides several definitions, of which the explanatory note will analyze only those that are considered most relevant.

*"1.1. "Ship" Any seagoing vessel and seabome craft, of any type whatsoever".*

This definition is very wide and is applicable to all types of ships except as provided in article 4(2). Here, the Convention excludes the applicability of its provisions to warships, naval auxiliary or other ships owned or operated by State and used, for time being, only on Government non-commercial service. Unless the State Party notified the Secretary-General of the IMO that will apply this Convention to that kind of ships.

---

<sup>2</sup> N Martinez, *Limitation of Liability in International Maritime Conventions*, Routledge, Oxon, 2011, p. 158 – 159.

<sup>3</sup> The term "bunkers" was originated in the days when the vessels were driven by steam turbines fed by coal, which were stored in coal bunkers. Although said vessels have been obsolete for a long time, the term is still used -nowadays- to describe the marine fuel in use by a ship, thus differentiating it from fuel as cargo.

<sup>4</sup> T Harrison, *Legal Issues in Bunkering*, Ed. Petrosport Limited, Oxfordshire, 2011, p. 135.

*"1.3. "Shipowner" means the owner, including the registered owner, bareboat charterer, manager and operator of the ship."*

This is a very wide definition of Shipowner but it should be taken into account that this definition does not include the time charterer.

*"1.5. "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. "*

According to the definition, biofuels would not be included, so when the use of these or their lubricants is significant, a modification will be necessary. Note also that fuel and lubricant residues are included in the definition<sup>5</sup>.

*"1.7. "Preventive measures" means any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage."*

Beyond that one can discuss what should be understood by "reasonable", it is clear that the intention in using the term is to give it a broad meaning.

*"1.8. "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."*

There are two points to be highlighted in the present definition. The first is that, although there is a series of multiple events, if they have a common origin they should be treated as a single event; this is important for the purposes of the limitations on claims. The second is that an event may arise before an escape of bunkers actually occurs, ensuring that the cost of preventive measures can be recovered, such as a local authority deploying containment measures in response to a stranded vessel.

*"1.9. "Damage due to pollution" 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*

---

<sup>5</sup> Ibid, p. 136.

*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."*

In addition to the clean-up costs and the expenses for repairing physical damages to the marine environment, the definition includes the economic losses derived directly from the event and, presumably, will also include the cost of the measures against pollution and the consequential losses derived from said measures.

However, compensation for "damage to the environment" is limited to the cost of restoration, presumably to avoid speculative claims and any type of claim for injury to feelings or similar damages<sup>6</sup>.

#### *1.3.2.- Scope of Application and Exclusions*

Article 2 establishes the geographical and factual limits of the Convention.

*"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;"*

In other words, this Convention applies to damage due to pollution occurring both in the territorial sea of 12 miles as well as internal waters such as, for example, the De la Plata River and Uruguay River, since the Convention refers to "territory" of a State Party including the territorial sea. Therefore, damage in ports would also be included.

---

<sup>6</sup> Ibid, p. 137.

Furthermore, it includes within the scope of application, the Exclusive Economic Zone or a space equivalent to 200 nautical miles.

*"(b) to preventive measures, wherever taken, to prevent or minimize such damage."*

It is important to note that the event that gives rise to the damage caused by contamination can occur anywhere, so in a similar way, preventive measures to protect the territory of a State Party can also be taken anywhere.

Article 4 provides that *"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."*

This is because the Convention known as CLC already covers oil tankers, which is why the application of the Bunkers Convention is expressly excluded from the area of application covered by the CLC, in order to avoid any discussion of overlapping claims.

*"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."*

This article is clearly intended to cover collisions or other incidents between two or more vessels.

As argued by Harrison, it will be interesting to see to what extent the interested parties will try to hold both or all the vessels that may be responsible for an incident in order to maximize the cumulative value of each ship's limitation of liability<sup>7</sup>.

### *1.3.3.- Liability of the Shipowner*

As will be discussed, the Convention establishes a strict liability of the shipowner, limited and guaranteed by insurance.

---

<sup>7</sup> Ibid, p. 139.

Its article 3 provides that:

*"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."*

As it was said, the liability is focused on the shipowner at the time of the incident. He is strictly liable for oil pollution damage from his ship; that means, that he will be liable regardless of his fault. And, in paragraph 2 the Convention establishes that *"Where more than one person is liable in accordance with paragraph 1, their liability shall be joint and several."* According to Harrison<sup>8</sup>, this provision refers to the various subjects or parties covered by the definition of "Shipowner", rather than an incident involving more than one vessel which is covered by Article 5.

In paragraphs 3 and 4, the Convention establishes some exceptions to the liability of the Shipowner: a) the exception in paragraph 3 covers acts of war and similar, irresistible natural phenomena, deliberate malicious acts of third parties, and negligence of the authorities in the maintenance of navigational aids. And b) the exception in paragraph 4 provides that if the shipowner can prove that pollution damage arose as a result of the damaged party's deliberate or negligent action or inaction, the shipowner's liability to that party may be reduced in part or in full.

*"5. No claim for compensation for pollution damage shall be made against the shipowner otherwise than in accordance with this Convention."*

This provision is a kind of compensation for the shipowners as a counterpart to the strict liability.

This implies that no claim can be brought except in accordance with the Bunkers Convention. This would mean, that any claimant would be prevented from bringing actions under national law when the Convention applies. For example, no action could be brought under the provisions of Law No. 16.688 dated December 22, 1994, that regulate

---

<sup>8</sup> Ibid, p. 138.

the prevention and liability of oil spill and other hazardous substances from ships.

*"6. Nothing in this Convention shall prejudice any right of recourse of the shipowner which exists independently of this Convention."*

According to Harrison, the purpose of this provision is to preserve the right of the shipowner to be compensated by a third party in relation to the cost of any pollution damage for which he is liable.<sup>9</sup>

#### *1.3.4.- Limitation of Liability*

*"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."*

With regard to the right of shipowners to limit their liability in the internal order, or national regime, the following points should be made.

In Uruguayan Law, there is a rule that allows the limitation of liability, in article 1050 of the Commercial Code which regulates the limitation of liability by abandonment.

When the CLC and the Fund were ratified through Law 16.820 (04/23/1997), it was established that "Article 1050 of the Commercial Code shall not apply to vessels included in the Convention approved by the previous article". This means that this exception applies only to tankers. This is a specific exception to the application of 1050: for certain types of vessels (tankers), transporting a certain type of cargo (persistent oils) and in certain types of (maritime) voyages.

That means, that we can find in the scope of the limitation of liability established by art. 1050 several vessels as: general cargo, fishing vessels, cable ships, passengers, ro-ro ships, etc., tankers that do not transport persistent oil in bulk, and tankers that carry out their navigation in a non-maritime field, such as river.

---

<sup>9</sup> Ibid, p. 138.

However, taking into account this, is that the Maritime Authority promoted the incorporation of an article according to which the limitation of liability through Article 1050 of the Commercial Code was not allowed in any case of pollution from ships (article 84 of Law 18.996, 11/07/2012).

In this way, the article established a wider factual assumption than the previous one: since it covers all types of ships, all types of pollution, and in any aquatic space.

Regarding the shipowners' right to limit their liability in the international order, it is found that the Convention refers, in a declarative and non-restrictive manner, to the 1976 Convention on Limitation of Liability for Maritime Credits (known as the LLMC Convention) and its 1996 Protocol so that liability could also be limited through other conventions.

Both the 1976 Convention and its 1996 Protocol have not been ratified by Uruguay. In case some day it does, the limits established in said instruments would apply to pollution damages.

There are two sets of limits set forth in both the 1976 Convention and its 1996 Protocol, which are: A) claims for death or bodily injury and B) claims for property damage.

It should be borne in mind that if at any time Uruguay decided to ratify the LLMC 76 as amended, the set limits would apply to incidents caused by a bunker oil pollution damage.

On the other hand, these limits are applicable in the case of insurance (Article 7.1) as will be seen below.

#### *1.3.5.- Compulsory Insurance or Financial Security*

One of the most important elements of the Bunkers Convention is the requirement for vessels of more than 1,000 GRT to have insurance for damage due to pollution for an amount equal to the limits of liability established by the national limitation regime or applicable international and claimants have the right to directly act against the insurer, but in no case may exceed the amount calculated in accordance with the 1976 Convention, as amended.

*"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."*

The insurance or other guarantee is to cover the liability of the registered owner, unlike any of the other figures that fall under the broader definition of "shipowner", this is to avoid uncertainty and the possibility of multiple unnecessary insurance.

The reference to the limits of liability is understood to point to the limits established by the State Party that issues the certificate referred to in numeral 2 of the article under analysis. But note that it establishes a maximum limit that will be calculated in accordance with the 1976 Convention.

It is important to note that insurance is not mandatory for vessels of up to 1,000 GRT, but the other provisions of the Convention are applicable to them.

According to paragraph 2, it establishes that there must be on board the ship a certificate issued by the State Party proving the compulsory insurance as well as its validity.

If the vessel is registered in a State Party then, the flag State must endorse the certificate; but if the ship is registered in a non-State Party, then the certificate may be issued or certified by any State Party. The certificate must conform to the model that appears as an annex to the Convention and must contain the following information:

*"(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. "*

On the other hand, paragraph 3 authorizes the State Party to delegate the issuance of the certificate to an institution or organization recognized by the State, which must inform the State the issuance of each certificate.

The certificate must be on board the vessel (as provided in article 7.5) and may be in the official language of the issuing State the certificate together with a translation into English, French or Spanish, or it may be issued only in one of these last three languages (article 7.4).

Under Article 7.12, the States Parties to this Convention may require insurance or other guarantees from vessels exceeding 1,000 GRT, wherever they are registered when they: a) enter a port located in or leave its territory, or b) arrive at an offshore installation located in its territorial sea or leave it. The Convention adds that the amount of the insurance or guarantee must be in accordance with the provisions of number 1.

Article 7.13 establishes that for the purposes provided in the previous paragraph (Article 7.12), vessels shall not be obliged to carry the insurance certificate on board, when the State Party issuing the certificate maintains a record in electronic format accessible to all others States Parties

Article 7.9 establishes the mutual recognition of the validity of certificates issued by the States Parties.

It will be possible to act directly against the insurer (or any other person providing the financial guarantee) as established by article 7.10. In this case, the defendant insurer has the right to invoke the same means of defense as the shipowner, except for the bankruptcy or liquidation of the latter's assets.

In turn, the insurer is always entitled to limit its liability in accordance with Article 6, even in cases where the owner of the vessel is not. It is also empowered to invoke, as a means of defense, that the damages resulted from the willful misconduct of the shipowner, and also to require the concurrence of the shipowner in the proceeding.

Under Article 7.15, a State may at any time declare that the provisions with respect to

compulsory insurance do not apply to ships operating exclusively within the territory of that State and its territorial sea. Note that this exemption does not extend in the State's EEZ.

#### *1.3.6.- Time Limits*

According to article 8 there are two time limits that must be taken into account by the plaintiffs. Claims must be presented:

- A) within a period of three years from the date when the damage occurred, and
- B) no later 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.

#### *1.3.7.- Jurisdiction, Recognition and Enforcement*

According to article 9 claims for compensation must be presented in the courts of the States Party where the damage occurred, or where preventive measures to prevent or reduce the damage have been taken.

It also establishes that the defendant must be informed sufficiently in advance of any measure adopted pursuant to paragraph 1, although it is not specified by whom.

In turn, each State Party shall ensure that its courts are competent to hear claims for compensation under this Convention.

On the other hand, article 10 establishes that the foreign judgment issued in accordance with Article 9 must be recognized and may be enforced in another State Party, provided it has not been obtained fraudulently, due process has been respected and the required formalities have been complied with, in those States, without being able to review the substance of the foreign judgment.

## **1.4.- RESOLUTIONS ADOPTED BY THE 2001 DIPLOMATIC CONFERENCE**

### *1.4.1.- Resolution on Limitation of Liability*

It is important to highlight that the Convention, unlike the 1992 CLC and the HNS Convention, does not create a separate limitation regimen as was seen *ut supra* (1.3.4). The limitation regime, according to article 6, will be determined by the law of the State where the pollution occurs. As it is explained by Martinez, States have different rules on limitation of liability: some State are Parties to the LLMC Convention, other to its Protocol (1996), others may have their own national legislation providing different limits or denying the limitation of liability for pollution damage. “For this reason the Diplomatic Conference adopted a Resolution<sup>10</sup> urging all States to become Parties to the 1996 Protocol.”<sup>11</sup>

### *1.4.2.- Resolution on Promoting Technical Cooperation*

The resolution encourage all IMO Member States, 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; and 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 Minimize the Effects of Oil Pollution*

According to Griggs<sup>12</sup>, “[a] group of NGOs including ITOPF, CMI, Intertanko, IAPH, ICS, IG, ISU, OCIMF and BIMCO combined to submit a paper<sup>13</sup> to the Diplomatic Conference calling for the insertion in the Convention of a provision for the legal protection of persons taking reasonable preventative measures (including salvage) in response to a bunker oil spill. The paper invited delegates to recognize that such legal

---

<sup>10</sup> Annex 1 – Conference Resolution on Limitation of Liability.

<sup>11</sup> N. Martínez, *op. cit.*, p. 165.

<sup>12</sup> [www.bmla.org.uk/documents/imo-bunker-convention.doc](http://www.bmla.org.uk/documents/imo-bunker-convention.doc), accessed 12 April 2018.

<sup>13</sup> LEG/CONF. 12/8 (12<sup>th</sup> January 2001).

protection would encourage prompt and effective response thereby minimizing pollution damage.”

This proposal was rejected in the Legal Committee but, one of the Resolution adopted in the Diplomatic Conference which call upon States Parties, when implementing the Bunker Oil Pollution Convention, to consider the need to introduce in its domestic legislation provisions for the protection of persons responding to a casualty and taking measures to prevent or minimize the effects of oil pollution. And also recommends to consider the relevant provisions of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as a model for their legislation.<sup>14</sup>

### **1.5.- RESOLUTION ON ISSUE OF BUNKERS CERTIFICATES TO SHIPS THAT ARE ALSO REQUIRED TO HOLD A CLC CERTIFICATE**

Taking into account that the Bunkers Convention has a wider scope of application than the Civil Liability Convention, because both the definition of ship and the types of oil included are more comprehensive; and that the Bunkers Convention does not provide clear guidance on the subject of compulsory certificate, may lead to diverging interpretations among States Parties to the Bunkers Convention as to whether both certificates should be require. Therefore, in order to provide certainty on the application of the Bunker Convention, the IMO Assembly adopted, on 30 November 2011, the Resolution A.1055(27) in which recommends that States Parties to the Bunkers Convention issue the certificate prescribed by the Bunkers Convention even when the ships concerned also hold a CLC certificate.

### **1.6.- THE IMPLEMENTATION OF THE BUNKERS CONVENTION INTO THE URUGUAYAN LAW**

#### *1.6.1.- Why is it important?*

As was cited previously, Uruguay has ratified the CLC 69/92 and the Found Convention 71/92 that regulate the liability and compensation regime for pollution damage occurred by oil spill when carried as cargo or on bunkers of tankers. It is the only international

---

<sup>14</sup> N. Martínez, *op. cit.*, p. 163.

regime that Uruguay has ratified and implemented.

It is important to highlight that Montevideo Port moved 942.221 TEUs during 2017, representing an increase of 6,5% over the same period last year.<sup>15</sup> What is more, Uruguay has received 111 passenger ships (cruise) in the 2016-2017 season.<sup>16</sup>

In addition, all ships that go to Buenos Aires port or Santa Fe ports (both in Argentina), or even port in Paraguay, need to voyage through “De la Plata” River and pass in front of Montevideo, thus it will be very important for Uruguay to accede to the Bunkers Convention and then complete the international liability regime for oil spill from ships other than tankers.

#### *1.6.2.- How to implement it?*

According to the Uruguayan Constitution (articles 168(20) y 85(7)), to introduce an international Convention into the Uruguayan legal system, it is necessary the promulgation of the international text. Therefore, after the first analysis of the Bunkers Convention, which is carried by the Executive Power, and after the approval of the two houses (Chambers of Deputies and Chambers of Senate) of the Parliament through a law, the Executive Power will order the publication in the official gazette of the law and the text of the Convention, and then the Bunkers Convention will be part of the Uruguayan Law.

The Law that ratifies or accedes to an international Convention can also contain other stipulations other than the accession or ratification of the Convention itself. Some aspects, such as limitation of liability necessarily have to be stipulated in a law, not in a regulation by decree according with the Uruguayan Constitution, since it could limit the right to full compensation in respect of the damage.

Once the accession to the Convention is approved, Uruguay will have to implement properly the Convention taking into account that the Convention leaves several aspects to be drawn by the State Party, as follows:

---

<sup>15</sup>[http://www.mtop.gub.uy/-/el-puerto-de-montevideo-moviliza-record-de-contenedores?p\\_p\\_state=maximized](http://www.mtop.gub.uy/-/el-puerto-de-montevideo-moviliza-record-de-contenedores?p_p_state=maximized) accessed 26 April 2018.

<sup>16</sup><http://www.anp.com.uy/inicio/institucional/cifras/montevideo/estadisticas/cruceros/arribos/evolucionarribos20112017/> accessed 26 April 2018.

#### *1.6.2.1.- Limitation of Liability*

As it was stated *ut supra* (1.4.1) regarding limitation of liability, the Bunkers Convention determines that the regime applicable is anyone under national or international law, and actually points it out the LLMC Convention as an option, but accordingly with the Resolution adopted in the Diplomatic Conference the intention of the Conference was to subject the claims under the Bunkers Convention to the limits imposed by the LLMC Convention and its 1996 Protocol.

But, taking into account that Uruguay is not a State Party of such Convention and until ratifies it, it is necessary to expressly stipulate its limits of liability.

Thus, it is proposed that to implement the resolution, the enactment law includes a transitory article establishing the limits of liability which will be repealed once Uruguay ratifies the LLMC Convention.

#### *1.6.2.2.- Compulsory Insurance of Financial Security Certificate*

The Bunkers Convention obliges the registered owners of a ship with a gross tonnage greater than 1,000 to maintain insurance or other financial security to cover its liability. Upon this obligation, it is up to the State Party the duty to issue to each ship under its registration a certificate attesting that insurance or the financial security is in force in accordance with the provisions of the Convention.

In order to do so, Uruguay shall regulate this subject, delegating this task to the competent body, which is the *Dirección Registral y de Marina Mercante* (Registration and Merchant Marine Directorate), of the Prefectura Nacional Naval (Uruguayan Coast Guard).

The regulation will establish fines in case of not fulfilment with the insurance certificate stipulations, which will be established as *Unidad Reajutable –UR–* (Resettable Unit). This is a measure of value used in Uruguay for fines that is updated per month according to article 38 of the Law No. 13.728.

#### *1.6.2.3.- Jurisdiction*

According to Article 9(3) of the Bunkers Convention “each State party shall ensure that its courts have jurisdiction to entertain actions for compensation under this Convention”.

Therefore, when implementing the Bunkers Convention, it must expressly state under its law that the national courts have jurisdiction to deal with the action possibly brought based on this Convention, in accordance also to the provisions of the national law regarding internal competence.

Consequently, and taking into account the importance of the subject, the regulations of the aforesaid Convention will stipulate the Court of First Instance in Civil Matters as the competent courts to deal with the action brought based in this Convention.

And, in order to ensure a clear application of the procedure to be followed for the recognition and enforcement, the regulation of the Bunkers Convention will establish the application of the provisions set out in Title X – International Procedural Rules of the General Procedural Code approved by Law 15.982 as amended. This Title regulates all the legal procedure for the enforcement and recognition of foreign judicial decisions, e.g. the judicial decision and all the attached documentation have to be duly legalized and translated if it is applicable, establishes the Supreme Court as the competent court for the execution of foreign judicial decisions, etc.

#### *1.6.2.4.- Responder Immunity*

As it was stated IMO adopted a Resolution urging States to consider the need to introduce a legal provision granting the responder immunity. Also, the Resolution recommends States Party to exempt persons that take preventive measures from criminal or civil liability, unless the liability results from their personal act or omission, committed with the intent to cause damage or recklessly and with knowledge that such damage would probably result. Therefore, when implementing the Bunkers Convention, Uruguay shall include provisions concerning responder immunity.

#### *1.6.2.5.- Recognition and enforcement*

While the Convention is clear in this regard, it is preferable that the law determine the application of the CGP in all matters relating to the recognition and enforcement of the extrinsic sentence where the formal aspects to be met are determined so that it can be recognized and enforced in our country, such as the legalization of documents to be presented, translations, etc.

## **PART II**

### **2.1.- LAW PROMULGATING THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE 2001**





Law No. \_\_\_\_\_

## LEGISLATIVE POWER

The Senate and the House of Representatives of the Eastern Republic of Uruguay, meeting  
in the General Assembly,

DECREE:

**Article 1.- (Accession)** The Eastern Republic of Uruguay accedes to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 attached as an annex to this Law.

**Article 2.- (Transitory provisions. Limitation of liability)**

(1) Pending accession of Uruguay to the Convention on Limitation of Liability for Maritime Claims 1976 or the Protocol thereto, the shipowner or other person providing financial security shall be entitled to limit any liability incurred under this Law and the Convention as follows:

(i) 1.51 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,  
(ii) for a ship with a tonnage in excess thereof the following amount in addition to that mentioned in (i):

- for each ton from 2,001 to 30,000 tons, 604 Units of Account;
- for each ton from 30,001 to 70,000 tons, 453 Units of Account; and
- for each ton in excess of 70,000 tons, 302 Units of Account.

(2) For the purpose of calculation of limitation of liability, tons are the gross tonnage of the liable ship calculates as it is prescribe in the International Convention on Tonnage Measurement of Ships, 1969 ratified by Uruguay by Law N° 15.956 (20 June, 1988).

(3) 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.

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

(5) Until the State ratifies and implements the Protocol of the Convention on Limitation of Liability for Maritime Claims, the present Law shall apply to all claims brought before

Uruguayan courts under the Bunkers Convention, being excluded of application any other regime of limitation of liability.

**Article 3.- (Responder immunity)** 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 to the ship;
- (c) any person performing salvage operations with the consent or on the instructions of the shipowner or on the instructions of a competent person so authorized by the Minister;
- (d) any person taking measures to prevent or minimize the effects of oil pollution;
- (e) the servants or agents of persons mentioned in paragraphs (c) and (d):

Provided that the damage did not result from their personal act or omission, committed with the intent to cause damage, or recklessly and with knowledge that such damage would probably result.

**Article 4.- (Recognition and enforcement of foreign judgments)** The provisions applicable for and in relation to giving effect to Article 10 of the Bunkers Convention are the provisions set out in the Title X – International Procedural Rules of the General Code approved by Law N° 15.982 as amended.

**Article 5.-** The Executive Power shall dictate the necessary regulations for the compliance with this law.

**Article 6.-** The present law enters into force 10 days after its publication in the Official Gazette.

Plenary Room of the House of Representatives, in Montevideo, \_\_\_\_ \_\_, 2018.

JOSÉ CARLOS MAHÍA,  
President.  
Virginia Ortiz,  
Secretary.

**ANNEX**

**TEXT OF THE 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 defenses 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 recognized 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 organizations 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 defenses (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 defense that the pollution damage resulted from the wilful misconduct of the shipowner, but the defendant shall not invoke any other defense 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 minimize 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 judgment 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 recognized in any State Party, except:
  - (a) where the judgment 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 judgment recognized 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.- SUPERSESION 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 judgments which must be recognized in States Parties, shall be construed as references respectively to courts of, and to judgments which must be recognized in, the relevant territorial unit.

#### **ARTICLE 14.- ENTRY INTO FORCE**

- This Convention shall enter into force one year following the date on which
1. 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 authorized by their respective Governments for that purpose have signed this Convention.

**ANNEX**

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

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

Name of Ship	Distinctive Number or letters	IMO Ship Identification Number	Port of Registry	Name and full address of the principal place of business of the

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.

Type of Security .....

Duration of Security .....

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

Name.....

Address.....

.....

This certificate is valid until

.....

Issued or certified by the Government of

.....

.....

(Full designation of the State)

**OR**

*The following text should be used when a State Party avails itself of article 7(3)*

The present certificate is issued under the authority of the Government of....(full designation of the State) by.....(name of institution or organization)

At .....  
(Place)

On .....  
(Date)

.....

(Signature and Title of issuing or certifying official)

# PRESIDENCY OF THE EASTERN REPUBLIC OF URUGUAY

MINISTRY OF NATIONAL DEFENSE

MINISTRY OF FOREIGN AFFAIRS

MINISTRY OF ECONOMY AND FINANCE

MINISTRY OF TRANSPORTATION AND PUBLIC WORKS

Montevideo, \_\_\_\_ \_\_, 2018.

To be enforced, acknowledge receipt, communicated, published and inserted in the National Registry of Laws and Decrees, the Law by which the International Convention on Civil Liability for Bunker Oil Pollution Damage of 2001 is approved.

TABARÉ VÁZQUEZ.  
JORGE MENÉNDEZ.  
RODOLFO NIN NOVOA.  
DANILO ASTORI  
VICTOR ROSSI

**2.2.- INSTRUMENT OF ACCESSION OF THE  
INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR  
BUNKER OIL POLLUTION DAMAGE, 2001 BY THE  
EASTERN REPUBLIC OF URUGUAY**

**To be deposited with the Secretary-General of IMO, London**

**INSTRUMENT OF ACCESSION**

**International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001  
(BUNKERS 2001)**

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 EASTERN REPUBLIC OF URUGUAY, being a State entitled to become a party to the said Convention by virtue of Article 12 thereof,

NOW THEREFORE the Government of the EASTERN REPUBLIC OF URUGUAY having considered and approved the said Convention, hereby formally declares its accession/ratification to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001.

IN WITNESS WHEREOF I, TABARÉ VÁZQUEZ, President of the EASTERN REPUBLIC OF URUGUAY have signed this Instrument of Accession and affixed the official seal.

DONE at MONTEVIDEO, this ..... day of ..... two thousand and eighteen

(Seal)

---

Dr. Tabaré Vázquez  
President

## **2.3.- LIABILITY FOR BUNKER OIL POLLUTION DAMAGE REGULATIONS**



## DECREE N° \_\_\_\_\_

# ON BUNKER'S CERTIFICATE REGARDING COMPULSORY INSURANCE OR OTHER FINANCIAL SECURITY

MINISTRY OF NATIONAL DEFENSE

MINISTRY OF ECONOMY AND FINANCE

MINISTRY OF TRANSPORTATION AND PUBLIC WORKS

Montevideo, \_\_\_\_ \_\_, 2018

THE PRESIDENT OF THE REPUBLIC

### DECREES

#### **PART I – INTRODUCTORY PROVISIONS**

##### **Article 1.- Citation**

The title of these regulations is the Liability for Bunker Oil Pollution Damage Regulations.

##### **Article 2.- Interpretation**

(1) In these regulations unless the context otherwise requires -

A) "the Law" means the Liability for Bunker Oil Pollution Damage Law N° \_\_\_\_\_, date \_\_\_\_\_ 2018;

B) "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 Uruguay and other instruments, standards and specifications of a mandatory nature related thereto adopted or developed by the International Maritime Organization (IMO);

C) "the Minister" means the Minister responsible for shipping and includes any public officer, or an officer of any body corporate established by law, acting under his authority;

D) "territorial waters of Uruguay" shall have the same meaning as is assigned to the term in the Law N° 17.033.

E) "Maritime Authority" means the Uruguayan Coast Guard (Prefectura Nacional Naval);

F) "DIRME" means the Directorate of Registry and Merchant Shipping and includes any person acting under its authority;

G) "enforcement officer" means an officer of the Authority;

H). "exclusive economic zone" has the same meaning as in the Law No. 17.033;

I) "U.R. " means Resettable Unit according to article 38 of the Law No. 13.728.

(2) Unless otherwise defined in these regulations, or unless the context so requires, words and expressions used in these regulations shall have the same meaning assigned to them in the Bunkers Convention.

(3) Any reference in these regulations to an international convention or its related protocol or code shall include reference to any amendment to such convention, protocol or code accepted by the Government of Uruguay.

### **Article 3.- Bunkers Convention given force of law in Uruguay**

(1) Subject to the provisions of sub-regulations (2) to (6) the Bunkers Convention as may from time to time be amended and as it is in force, shall, unless otherwise provided in these regulations and notwithstanding the provisions of any other law, form part of and be enforceable as part of the Law of Uruguay and shall apply to all Uruguayan ships, wherever they may be and to all other ships while they are in Uruguayan waters as determined by the said Convention.

(2) Reference in the Bunkers Convention and in these regulations to "the Court" shall be read and construed as reference to the Court of First Instance in Civil Matters.

(3) Where pollution damage, resulting from an incident, has been sustained in Uruguay, including the territorial waters of Uruguay and the exclusive economic zone of Uruguay

as it is established in accordance with international law, or if preventive measures have been taken to prevent or minimize such damage in that exclusive economic zone, action for compensation under the provisions of the Bunkers Convention shall be brought in Uruguay before the Court by presenting a claim before such Court. Such a claim shall be instituted in accordance with the Code of General Procedure.

(4) The appropriate authority for the purposes of issuing the certificate attesting that insurance or other financial security is in force, as referred to in Article 7(2) of the Bunkers Convention, in respect of ships registered in Uruguay shall be DIRME who shall for the purposes of Article 7(7) of that Convention and subject to the provisions of the same Convention and of these regulations determine the conditions of issue and validity of such certificate and, in respect of ships registered in a State not party to the Bunkers Convention shall be the said DIRME who shall have such powers as aforesaid, or the appropriate authority of a State Party to the Convention, in accordance with the provisions thereof:

Provided that a certificate referred to in sub-regulation (5) in respect of a ship registered under the Uruguayan flag, issued before the entry into force of these regulations by another State Party to the Bunkers Convention shall remain valid until such date stated on the said certificate.

#### **Article 4.- Overlap with Civil Liability Convention**

This regulation does 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 Civil Liability Convention approved by Law No. 16.820.

## **PART II – INSURANCE CERTIFICATES RELATING TO LIABILITY FOR POLLUTION DAMAGE**

#### **Article 5.- Scope of application of this Part**

- (1) This Part applies to a ship that has a gross tonnage of more than 1,000, including ships within the scope of application of the Civil Liability Convention.
- (2) (*Government ships*) This Part applies to a government ship only if it is being used for commercial purposes.



**Article 6.- Prohibition of proceeding to sea without appropriate certificate**

(1) No Uruguayan ship to which Article 7 of the Bunkers Convention 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 7(2) to the Bunkers Convention.

(2) No foreign flagged ship to which Article 7 of the Bunkers Convention applies shall proceed or attempt to proceed to ports, installations or the territorial waters of Uruguay unless there is in force in respect of the ship the certificate referred to in Article 7(2) of the Bunkers Convention.

(3) The master of every ship to which sub-regulation (2) applies shall, at the time when clearance for the ship is demanded, produce to the officer from whom such clearance is demanded, the certificate referred to in the said sub-regulation, and clearance shall not be granted, until the said certificate is so produced.

**Article 7.- Foreign ships. Obligation to carry insurance certificate on board**

(1) Foreign ships shall carry insurance certificate when entering or leaving ports in Uruguay.

(2) A person commits an offence if:

(a) the person is the registered owner or master of a ship to which this Part applies; and

(b) the ship:

(i) enters or leaves a port in Uruguay; or

(ii) arrives at or leaves an offshore facility in the territorial sea of Uruguay; and

(iii) at the time the ship does so, the ship does not have on board an appropriate insurance certificate for the ship that is in force.

Penalty: 2,500 UR.

(3) Section (2) does not apply if:

(a) an appropriate insurance certificate for the ship is in force at the time referred to in paragraph (1)(c); and

(b) the issuer of the certificate has notified the Secretary-General that it maintains records in an electronic form that attest to the existence of the certificate; and

(c) the records are accessible to all countries to which the Bunker Oil Convention applies.

**Article 8.- Ships registered in Uruguay. Obligation to carry insurance certificate on board**

- (1) Ships registered in Uruguay shall carry insurance certificate when in operation.
- (2) A person commits an offence if:
  - (a) the person is the registered owner or master of a ship to which this Part applies; and
  - (b) the ship is registered in Uruguay and
  - (c) at the time the ship is in operation, the ship does not have on board an appropriate insurance certificate for the ship that is in force.

Penalty: 1,000 UR.

- (3) Section (2) does not apply if:
  - (a) an appropriate insurance certificate for the ship is in force at the time referred to in paragraph (1)(c); and
  - (b) the issuer of the certificate has notified the Secretary-General that it maintains records in an electronic form that attest to the existence of the certificate; and
  - (c) the records are accessible to all countries to which the Bunker Oil Convention applies.

**Article 9.- Issue of certificates for ships other than government ships**

- (1) (*Application for certificate*) A person may apply to the Authority for the issue of a certificate for a ship that is registered:
  - (a) in Uruguay; or
  - (b) in a foreign country that is not a country to which the Bunker Oil Convention applies.
- (2) (*Government ships*) This article does not apply to a government ship.
  - (a) (*Form of application*) An application must be in accordance with the form approved by the Authority, in writing
- (3) (*Decision on application*) If the Authority is satisfied that the registered owner of the ship is maintaining insurance or other financial security for the ship in an amount that will cover the limits of liability referred to in paragraph 1 of Article 7 of the Bunker Oil Convention in relation to the ship, it must issue a certificate for the ship. If the Authority

is not so satisfied, it must refuse to issue a certificate for the ship.

(4) (*Form of certificate*) A certificate under this section shall be in the form of the model set out in Annex I of this Decree.

(5) (*Period certificate in force*) A certificate under this section comes into force on the day specified in the certificate.

#### **Article 10.- Issue of certificates for government ships with commercial purpose**

(1) The Authority may issue a certificate, for a ship owned or operated by a State, certifying that:

- (a) the ship is owned or operated by the State; and
- (b) the Executive Power is satisfied that will meet any liability for pollution damage up to the limits of liability referred to in paragraph 1 of Article 7 of the Bunkers Convention in relation to the ship—any such liability will be met by the State; and

(2) (*Form of certificate*) A certificate under this article must be in the form approved by the Authority in writing.

(3) (*Period certificate in force*) A certificate under this article:

- (a) comes into force on the day specified in the certificate; and
- (b) remains in force for the period specified in the certificate.

(4) However, if the State ceases to own or operate the ship covered by a certificate under this article, the certificate immediately ceases to be in force.

#### **Article 11.- Enforcement officer may require insurance certificate to be produced**

(1) An enforcement officer may require the master or other person in charge of a ship to which this Part applies to produce to the officer an appropriate insurance certificate for the ship that is in force if:

- (a) for a ship that is registered in Uruguay: when the ship is in Uruguay; or
- (b) for any other ship: when the ship is at a port in Uruguay or at an offshore facility in the territorial sea of Uruguay.

(2) (*Offence*) A person commits an offence if:

- (a) the person is subject to a requirement under section (1); and
- (b) the person fails to comply with the requirement.

Penalty: 50 UR.

(3) Section (2) does not apply if:

- (a) an appropriate insurance certificate for the ship is in force at the time the requirement under section (1) is made; and

- (b) the issuer of the certificate has notified the DIRME that it maintains records in an electronic form that attest to the existence of the certificate; and
- (c) the records are accessible to all countries to which the Bunker Oil Convention applies.

**Article 12.- Enforcement officer may detain ships**

- (1) An enforcement officer may detain a ship to which this Part applies in a port in Uruguay if the officer has reasonable grounds to believe that, at the time the ship attempts to leave the port, there is not an appropriate insurance certificate for the ship that is in force.
- (2) The officer may detain the ship until the certificate is produced to the officer or the officer is satisfied that the certificate has been obtained.
- (3) A person commits an offence if:
  - (a) the person is the registered owner or master of a ship to which this Part applies; and
  - (b) an enforcement officer has detained the ship under section (1) in a port in Uruguay; and
  - (c) the ship leaves the port while it is under detention.

Penalty: 50 UR.

**Article 13.- Authority may cancel certificate**

- (1) The Authority may cancel a certificate issued under article 9 for a ship if it is satisfied that the registered owner of the ship is no longer maintaining insurance or other financial security for the ship in an amount that will cover the limits of liability referred to in paragraph 1 of Article 7 of the Bunker Oil Convention in relation to the ship.
- (2) The Authority must give notice of the cancellation to:
  - (a) the registered owner of the ship; and
  - (b) the master (if any) of the ship; and
  - (c) if, when the certificate was issued, the ship was registered in a foreign country that was not a country to which the Bunker Oil Convention applied—the foreign country.
- (3) The cancellation takes effect on the day specified in the notice of cancellation.

**Article 14.- When certificate automatically ceases to be in force**

- (1) (*Ship registered in Uruguay*) A certificate issued under article 9 for a ship

immediately ceases to be in force if:

- (a) when the certificate was issued, the ship was registered in Uruguay; and
- (b) the ship ceases to be registered in Uruguay.

(2) (*Ship registered in foreign country that is not a Convention country*) A certificate issued under article 9 for a ship immediately ceases to be in force if:

- (a) when the certificate was issued, the ship was registered in a foreign country that was not a country to which the Bunker Oil Convention applied; and
- (b) the ship ceases to be registered in that country or that country becomes a country to which that Convention applies.

**Article 15.-** The *DIRME* may issue internal rules for the proper implementation of the present Decree.

**Article 16.-** This Decree shall enter into force 10 days after its publication in the Official Gazette.

**Article 17.-** Communicate it, publish it, etc.

TABARE VAZQUEZ - JORGE MENÉNDEZ - DANILO ASTORI - VICTOR  
ROSSI

**ANNEX I**

**CERTIFICADO DE SEGURO U OTRA GARANTIA FINANCIERA RELATIVO  
A LA RESPONSABILIDAD CIVIL POR 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 Combustibles 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 DIRECCIÓN REGISTRAL Y DE MARINA  
MERCANTE DE LA PREFECTURA NACIONAL NAVAL, REPÚBLICA  
ORIENTAL DEL URUGUAY**

Nombre del Buque  Name of Ship	Número o Letras distintivos  Distinctive Number or letters	No. IMO de Identificación del Buque  IMO Ship Identification Number	Puerto de Registro  Port of Registry	Nombre y domicilio completo del centro principal de negocios del propietario registral  Name and full address of the principal place of business of the registered owner.

El presente es para certificar que se encuentra vigente respecto al buque antes mencionado, una póliza de seguro u otra garantía financiera que satisface los requisitos del 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** \_\_\_\_\_

(Address)

**Este certificado es válido hasta** \_\_\_\_\_

(This certificate is valid until)

**EL CERTIFICADO ES EXPEDIDO O VISADO POR EL GOBIERNO DE:**

Issued or certified by the Government of:

**URUGUAY**

**Expedido en** (issued at) \_\_\_\_\_ **A** (the) \_\_\_\_\_

Lugar (Place)

Fecha (Date)

.....

Firma del funcionario autorizante

(Signature and Title of issuing or certifying official)