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## **An Act to Implement the International Convention on Civil Liability for Bunker Oil Pollution, 2001 into the Laws of Chile**

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## TABLE OF CONTENTS

<i>Table of contents</i>	<i>page 3</i>
<i>Introduction</i>	<i>page 4</i>
<i>1. Analysis of the “Bunkers Convention”</i>	<i>page 7</i>
<i>a. Objective and definitions</i>	<i>page 7</i>
<i>b. Scope of application</i>	<i>page 8</i>
<i>c. Exclusions</i>	<i>page 8</i>
<i>d. Liability of the shipowner</i>	<i>page 9</i>
<i>e. Limitation of liability</i>	<i>page 9</i>
<i>f. Insurance requirement</i>	<i>page 10</i>
<i>g. Jurisdiction, right of direct action, time limits and recognition and enforcement.</i>	<i>Page 11</i>
<i>2. Regulation on civil liability for damage from spills of oil under the Chilean Domestic Law.</i>	<i>Page 12</i>
<i>3. Main grounds to incorporate into the Chilean legislation the “Bunkers Convention”</i>	<i>page 13</i>
<i>4. Signature, Approval, and Ratification of a Convention under the Chilean legislation and their effects in the local law</i>	<i>page 17</i>
<i>Conclusions</i>	<i>page 19</i>
<i>Supreme Decree</i>	<i>page 21</i>
<i>Statutory Decree</i>	<i>page 23</i>
<i>ANNEX I, International Convention on Civil Liability for Bunker Oil Pollution Damage</i>	<i>page 28</i>
<i>ANNEX II, Chapter IX, Chilean Navigational Law</i>	<i>page 41</i>
<i>Bibliography</i>	<i>page 51</i>

## **Introduction**

One of the main goals that every State must achieve after incorporating an international maritime agreement into the local law is to be on an equal position in the right to use and enjoy the sea for its own benefit. However, a State must also be able to assume the obligations to take care of the sea through preventive measures and repair the consequences of damages that frequently occur by acts of third parties.

“After the shock caused by the Liberian tanker “Torrey Canyon”, accident in 1967 off the United Kingdom coastline, member States of the International Maritime Organization (IMO) established a special international regime aiming at ensuring adequate compensation for victims of pollution damage caused by oil spills from ships”.<sup>1</sup> At that time the IMO was the Inter-Governmental Maritime Consultative Organization, or IMCO.<sup>2</sup>

One of those instruments was the International Convention on Civil Liability for Oil Pollution Damage, adopted in Brussels on 29 November 1969,<sup>3</sup> which entered into force on 19 June 1975. Later, this Convention was amended by the 1992 Protocol,<sup>4</sup> or also known as 1992 Civil Liability Convention, which entered in force on 30 May 1996.

The main features of both Conventions are basically the same, as they establish a regime of compensation for those Contracting States that suffered oil pollution damage caused by spills from oil tankers, by laying down the principle of strict liability of the shipowner, who is normally entitled to limit his liability to an amount which is related to the tonnage of the ship, and also creating a system of compulsory insurance or other financial security for certain types of ships. The main differences between them is that the 1992 CLC increased limits of liability, widened the scope to

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<sup>1</sup>José Juste-Ruiz, “The IMO Conventions on Civil Liability for Oil Pollution Damage”, Mepielan e Bulletin, Friday, 05 April 2013, p 1/4.

<http://www.mepielan-ebulletin.gr/default.aspx?pid=18&CategoryId=4&ArticleId=138&Article=European-Courts-Go-beyond-the-IMO-Conventions-on-Civil-Liability-for-Air-Pollution-Damage>.

<sup>2</sup> The named was changed in 1982 to International Maritime Organization (IMO).

<sup>3</sup> Hereinafter referred to as 1969 CLC.

<sup>4</sup> Hereinafter referred to as 1992 CLC.

cover pollution in the exclusive economic zone; allowed expenses incurred for preventive measures to be recovered even when no spill oil occurs, provided there was a grave and an imminent threat to pollution damage; and most importantly, covers spills from seagoing vessels constructed or adapted to carry oil in bulk as cargo, i.e. laden or unladen tankers, including spill of bunker oil.

Due to a mechanism of compulsory denunciation, from 16 May 1998, parties to the 1992 CLC ceased to be parties to the 1969 CLC. However even today the two regimes coexist, because there are still countries that have not yet ratified the 1992 CLC, that only apply the 1969 CLC.

Thus, an important omission of both Conventions was to ensure that a compensation would be available to those who suffer damage caused by bunker oil spills from a ship, that is, including any seagoing vessel and damages not covered by the 1969 CLC and 1992 CLC. “It should be noted that liability for pollution caused by bunker spills from non-tankers is not covered by the CLC”.<sup>5</sup>

Due to the large amount of pollution caused by ships, the International Maritime Organization (IMO) convened a diplomatic conference in London that approved the International Convention on Civil Liability for Bunker Oil Pollution Damage on 23 March 2001,<sup>6</sup> which entered into force on 21 November 2008.

Apart from the above fundamental differences, the Bunkers Convention was basically modelled on the 1969 CLC and 1992 CLC, as it maintains the scope of application to pollution damage caused in the territory, including the territorial sea and in the exclusive economic zone of a State Party. Also, it was established that the shipowner shall be required to maintain compulsory insurance or other financial security, and the basis of his liability will be strict. However, another important difference between them is the applicable regime of limitation of liability. Thus while in the 1969 CLC and 1992 CLC the shipowner has the right to limit his liability according to the regime established therein, in the Bunkers Convention will be subject by the regime determined by the law of the State where the damage occurs.

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<sup>5</sup> Patrick Griggs, Richard Williams, Jeremy Farr “Limitation of Liability for Maritime Claims”, Fourth Edition, LLP London Singapore, 2005, p. 28.

<sup>6</sup> Hereinafter referred to as the Bunkers Convention.

It should be noted that the international framework on liability and compensation for pollution damages, are also contained in other international conventions, such as the International Oil Pollution Compensation Fund, 1971, amended by the 1992 Fund, (IOPC Funds), that was adopted as supplementary to the Civil Liability Conventions in order to provide compensation funds up to the fixed limit, in cases that the amount payable by the shipowner or his insurer was insufficient to provide full compensation to the victims; the International Oil Pollution Compensation Supplementary Fund, established by the Protocol of 2003; and International Convention on Civil Liability for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, amended by the 2010 Protocol.

From all the Conventions above mentioned, Chile only ratified both 1969 CLC and 1992 CLC since 12<sup>th</sup> August 1977 and 16<sup>th</sup> April 2003,<sup>7</sup> respectively. Chile did not denounce the 1969 CLC, as it will be addressed again when dealing with the regulations for damage from oil spills under the Chilean Domestic Law.<sup>8</sup>

It must be emphasized that Chile has not been immune to suffer oil spill disasters, an example and probably the worst accident that has ever occurred within the coastlines of Chile, was the grounding of the Dutch Tanker “Metula”, on 9 August 1974. This tanker of 325.2 meters in length and 47.1 meters width, ran aground in the most narrow part of the Magellan Strait, causing an oil spill of 55,500 tonnes, polluting an area of 2.560 square kilometres.

A more recent case occurred in the Bay of Antofagasta in October 2005, in the northern part of Chile, when a bulk carrier, as a result of stranding caused a spill of 126, 68 cubic meters or metric tonnes of oil. The results of the judicial investigation revealed that in the area where the accident occurred, there were other sources of contamination different from the accident, such as disposal from the fishery terminal, heavy liquids discharges, and from the maritime activity itself.<sup>9</sup> This example shows

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<sup>7</sup> Decree N° 475, 12 August 1977 and Decree N° 101, 16 April 2003.

<sup>8</sup> It is noteworthy that, as mentioned earlier, considering the compulsory denouncing provision of the 1992 CLC, Chile should have denounced the 1969 CLC upon accession to the 1992 CLC. However, Chile has not done so.

<sup>9</sup> Empresa Portuaria de Antofagasta v/s Compañía Pretty Bright Shipping S.A. y otro – Corte de Apelaciones de Antofagasta, 30 septiembre 2005. Rol: 211-05.

that the sea may have different pollution sources that need to be addressed either by international conventions or by the laws of each State, so as to have a legal system that covers, regulates and enforces any pollution source.

Therefore, this work will attempt to demonstrate the feasibility, the legal and factual reasons and the most appropriate way to implement the Bunkers Convention into the Laws of Chile. Thus, it will be possible to achieve a more modern, harmonized and effective legislation than that currently in force, as well as a complement to the 1969 CLC and 1992 CLC, to which Chile is a party.

## **1. Analysis of the “Bunkers Convention”.**

### **a) Objective and definitions:**

As it was stated above, the aim of this Convention is to establish an appropriate and effective compensation coverage for damage caused by spills of oil carried as fuel in ships' bunkers.

For that purpose, important definitions under the Convention are:

- “Ship” means any seagoing vessel and seaborne craft, of any type whatsoever;
- “Shipowner” means the owner, including the registered owner, bareboat charterer, manager and operator of the ship”;
- “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;
- “Preventive measures” means any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage.
- “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
- “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 than loss from such impairment shall be limited to cost of reasonable measures of reinstatement actually

undertaken or to be undertaken; and (b) the cost of preventive measures and further loss or damage caused by preventive measures.<sup>10</sup>

**b) Scope of application:**

This Convention applies to pollution damage caused in the territory, including the territorial sea and the exclusive economic zone or equivalent according to the international law of any State which is a party to the Convention. It also applies to preventive measures, wherever taken, to prevent or minimize such damage.<sup>11</sup> In this regard, it is important to emphasize that the definition of “bunker oil” in the Bunkers Convention does not only refer to persistent oil, as it is stated in the 1992 CLC, but it covers any type of spill and any kind of oil according to the definition contained in its Article 1 (5).

Furthermore, the definition of “Ship” refers to any kind of seagoing vessel and seaborne craft, of any type whatsoever, while the 1992 CLC refers only to tankers. Thus, the provisions of the Bunkers Convention are applicable even to tankers, in the event that they are not covered by the definition of ship of the 1992 CLC, that is, a ship capable of carrying oil and other cargoes.<sup>12</sup>

**c) Exclusions:**

The provisions of the Convention do not apply to pollution damage as defined in the Civil Liability Convention (1992 CLC), to warships or other ships owned or operated by a State. However any State which is a party may decide to apply the Convention to such ships.<sup>13</sup>

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<sup>10</sup> Article 1 (1, 3, 5, 7, 8, 9) Bunkers Convention.

<sup>11</sup> Article 2 Bunkers Convention.

<sup>12</sup> Article 1(1) 1992 CLC. “Ship” means any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.

<sup>13</sup> Article 4 Bunkers Convention.

**d) Liability of the shipowner:**

The Convention places liability on the shipowner. With some exceptions, the shipowner at the time of an incident should 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.<sup>14</sup>

Thus, the liability under the Bunkers Convention is strict. However, the shipowner may be relieved of liability if he proves that the damage result from: (i) an act of war, hostilities, or natural phenomenon; (ii) was wholly caused by an act or omission done with the intent to cause damage by a third party; or (iii) was wholly caused by any negligence of any Government for the maintenance of lights or other navigational aids.<sup>15</sup>

Here it is important to remember that the term shipowner in this Convention not only include the registered owner, but also includes persons like the bareboat charterer, manager and operator, so where more than one person is liable, their liability shall be joint and several.

The latter is a fundamental difference with the 1992 CLC, since the injured parties will be allowed to pursue a compensation from different persons and sources or assets, whereas the 1992 CLC channels the liability exclusively to the registered owner.

**e) Limitation of liability:**

The shipowner or persons providing insurance, are entitled to limit liability under any applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.<sup>16</sup>

The important matter to emphasize here is that the right of limitation of liability will be determined by the law of the State where the pollution damage has occurred either under any national existing regime or through an international regime. In the

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<sup>14</sup> Article 3 (1) Bunkers Convention.

<sup>15</sup> Article 3 (3) Bunkers Convention.

<sup>16</sup> Article 6 Bunkers Convention.

latter case, the Bunkers Convention expressly mentions the Convention on Limitation of Liability for Maritime Claim, 1976, as amended.

Although Chile is not party to this Convention, it is estimated that for the purposes of this paper it should be considered as a necessary complement to the Bunkers Convention.

**f) Insurance requirement:**

In this matter the Convention states that the registered owner of a ship with gross tonnage greater than 1000 registered in a State party shall be required to maintain insurance or other financial security, such as a guarantee of a bank or similar financial institution, to cover their liability for pollution damage.<sup>17</sup> Thus, the obligation is based on the tonnage of the ship, whereas in the 1969 CLC and 1992 CLC the same duty is on the owner of a registered ship carrying more than 2,000 tons of oil in bulk as cargo.

The main regulations on this are as follows:

- The amount of the compulsory insurance covered must be 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.<sup>18</sup>
- A certificate attesting that an insurance or other financial security is in force and shall be issued to each ship having gross tonnage greater than 1000 after the appropriate authority of a State Party has determined that the insurance or other security financial security exists. In relation to a ship registered in a State Party such certificate must be issued by the appropriate authority of the State of the ship's registry. A ship not registered in a State Party may be issued by the authority of any State Party, and shall be in the form of the model set out in the annex to the Convention.<sup>19</sup> A State Party may authorize either an institution or an

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<sup>17</sup> Article 7 Bunkers Convention.

<sup>18</sup> Article 7(1) Bunkers Convention.

<sup>19</sup> Article 7(2) Bunkers Convention.

organization recognized by it to issue the certificate, and shall notify the Secretary-General.<sup>20</sup>

- The certificate shall be carried on board the ship and a copy must be deposited with the authorities who keep the ship's registration.<sup>21</sup>
- Every State Party must accept the certificates issued or certified by other State Parties as having the same force as certificates issued or certified by them.<sup>22</sup> Also, every State Party shall ensure, under its national law, that ships entering or leaving a port in its territory have the insurance or other financial security.<sup>23</sup>

**g) Jurisdiction, right of direct action, time limits and recognition and enforcement:**

Where an incident has caused pollution damage in the territory stated in Article 2(a) of one or more States Parties, or preventive measures have been taken to prevent or minimize damage in such territory, actions for compensation against the shipowner, insurer or other persons providing security for the shipowner's liability may be brought only in the courts of any such States Parties.

An obligation is imposed on each State Party to ensure that its courts have jurisdiction to entertain actions for compensation under the Convention.<sup>24</sup>

In this respect, it is also important to note that the Convention provides that any claim for compensation 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 insurer or other person providing security may invoke the defences which the shipowner would have been entitled to invoke, including limitation of liability pursuant to article 6. Furthermore, the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintain in accordance with Article 7(1), even if the shipowner is not entitle to limitation of liability according to Article 6. Moreover, it may also invoke the defence that the pollution damage resulted from the wilful misconduct of the shipowner.

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<sup>20</sup> Article 7(3) Bunkers Convention.

<sup>21</sup> Article 7(5) Bunkers Convention.

<sup>22</sup> Article 7(9) Bunkers Convention.

<sup>23</sup> Article 7(12) Bunkers Convention.

<sup>24</sup> Article 9 Bunkers Convention.

Finally, the defendant shall in any event have the right to require the shipowner to be joined in the proceedings.<sup>25</sup>

Under the Convention, rights to compensation shall extinguish unless an action is brought thereunder in three years from the date when the damage occurred. However, the Convention states that no action may be brought more than six years from the date of the incident, and in case of a series of occurrences, the period shall run from the first occurrence.<sup>26</sup>

Finally, any judgments given by a Court with jurisdiction in accordance with article 9 of the Convention shall be recognized and enforceable in any State Party, unless the judgment was fraudulently obtained or the defendant was not given reasonable notice and fair opportunity to present his case.<sup>27</sup>

## **2. Regulation on Civil Liability for damage from spills of oil under the Chilean Domestic Law.**

Currently, this subject in Chile is regulated under Chapter IX of the Navigation Law number 2.222, published in the official journal 21 May 1978. This law entirely substituted the archaic Navigational Act enacted in 1878. As at 1978, Chile was already a party of the 1969 CLC (12 August 1977), among other international conventions that protected maritime pollution.

Paragraph 1 of Chapter IX named “Pollution”, in general terms prohibits throwing debris or waste and oil spill or its derivate, waters of minerals or other harmful or hazardous materials of any kind, which damages the waters under national jurisdiction, and in harbours, rivers and lakes.

Moreover, paragraph 2 of the same Act, between articles 144 and 148, deals with “Civil Liability for Damage from Spills of Oil and other Noxious Substances”. The most relevant provision in this last paragraph is contained in its Article 144, which states, in summary, that the same civil liability system established on the 1969 CLC, and without prejudice to the scope of this agreement, shall apply for the compensation

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<sup>25</sup> Article 7(10) Bunkers Convention.

<sup>26</sup> Article 8 Bunkers Convention.

<sup>27</sup> Article 10 Bunkers Convention.

of damages caused by spill of any substance or waste occurring within waters under national jurisdiction, whatever the activity which is being done by the ships and seaborne craft that produced it, with certain complementary rules.

The draft law also states that the liability system of oil pollution damage caused by spills from oil carrying ships is extended to the damage caused by spills of any other substance, oil or shipment, and any activity which has been developed when the ship caused the damage.<sup>28</sup>

In other words, the aforesaid civil liability and compensation regime currently in force in Chile includes, among other sources of pollution, bunker oil pollution damage caused from a ship, as the Bunkers Convention does.

Despite the obvious differences in this matter between the Chilean Navigation law and the Bunkers Convention, in the next point will attempt to demonstrate the advantages of implementing the Bunkers Convention instead of the current legislation.

### **3. Main grounds to incorporate into the Chilean legislation the “Bunkers Convention”.**

Basically, the proposal of this work is to adopt the Bunkers Convention into the Laws of Chile through the appropriate constitutional procedure, which will involve a more complete and updated legislation, as well as an adequate complement to the 1969 CLC and 1992 CLC, both currently in force within the country. This procedure should be carried out by effecting legislative repeals and amendments to the Navigation Law number 2.222 currently in force.

To achieve this objective, the following comparison with special emphasis in comparing both the Chilean Navigation Law and the Bunkers Convention, will provide a rationale for its adoption:

- a) The definition of “bunker oil” in the Bunkers Convention does not refer to persistent oil, as it is stated in the 1969 CLC, so it means that it covers any type of spill, persistent and non-persistent bunker. Chilean Navigation law makes no

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<sup>28</sup> Bill Law Navigation, p. 11.

distinction on this subject, but only refers to damage from spills or contamination of oil and other noxious substances.

Thus, it is considered a significant and substantive improvement to have such distinction clearly specified into the domestic legislation.

- b) The Bunkers Convention includes within the concept of “pollution damage”, the costs of preventive measures and further loss or damage caused by preventive measures,<sup>29</sup> whereas the Chilean Navigation law does not mention such measures.

The inclusion of this concept into the domestic legislation is also considered very important, since preventive measures are one of the most important activities in avoiding pollution damages.

- c) Closely related to the previous point, both the Bunkers Convention and the Chilean Navigation Law do not provide any provision on responder immunity, however the 2001 Conference adopted a Resolution on the protection of people taking action to prevent or minimize the effects of oil pollution. “Responder immunity is significant because it encourages person to take measures to prevent or minimize pollution damage without viewing liability as a Sword of Damocles hanging over their heads”.<sup>30</sup> Thus, the Resolution urges States when implementing the Convention to consider the need to introduce laws to protect that people and considering them exempt from liability, unless the liability resulted from their personal act or omission, considering for that purposes the HNS Convention.

As in the previous case, it is considered a very significant initiative and opportunity to implement a provision like the one suggested by the Conference, in order to benefit those persons who take preventive measures to protect the sea from bunker oil pollution.

- d) The Bunkers Convention covers pollution damage caused in the territorial sea and the exclusive economic zone, or equivalent according to the international law of any State which is a party to the Convention, including, where appropriate, to preventive measures. The 1969 CLC is applied exclusively on the territory including the territorial sea of a Contacting State, including preventive measures.

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<sup>29</sup> Article 1 (9) (b) Bunkers Convention.

<sup>30</sup> Norman A. Martínez Gutiérrez, “Limitation of Liability in International Maritime Conventions”, Routledge, First published 2011, p. 163.

The Chilean Navigation Law, meanwhile, refers to damage from spills or contamination of any kind of materials and wastes that occurred within waters under national jurisdiction, without any distinction. Regarding this last matter, it is worth noting that Chile only ratified the Law of the Sea Convention in 1997<sup>31</sup>, so at the time when the Navigation Law was decreed (1978), the jurisdiction waters in Chile only meant the territorial sea and adjacent areas only for police rights concerning national security and enforcement of fiscal laws, of one and four marine leagues, respectively.<sup>32</sup>

- e) Repeal from the Navigation Law everything related with ground facilities causing damage to the maritime environment by spilling pollutants, and namely to the mere possibility to limit their liability for damage to the marine environment by dumping or spillage of pollutants, according to the Article 145 of the same law. In this case, it is estimated that such matter should be legislated in a completely separate Chapter or other law, due to the nature of the spill that comes from ground facilities and the lack of relation between them and the damages arising from offshore sources.
- f) Under the Chilean Navigation Law the shipowner and the operator of the ship, who are jointly and severally liable, have the right to limit liability. In this regard it is considered that the Chilean Navigation Law was innovative for its time, as it established the joint and several liability of the owner and operator of the ship, which now is contained in the Bunkers Convention.
- g) The right of limit liability currently in Chile is basically based on the 1969 Convention. “In the case of pollution caused by the spillage of hydrocarbons, or other damaging substances, the Navigation Law permits the owner, proprietor or operator of a vessel or naval appliance, to limit liability for damages in each casualty up to a maximum in local currency equivalent to 2,000 francs per ton registered by the ship or naval appliance with a maximum of 210 million francs”.<sup>33</sup>

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<sup>31</sup> On June 23th 1997 Chile ratified the 1982 United Nations Law of the Sea Convention, but by law 18.565 of 1986 the Chilean Civilian Code was amended, establishing a territorial sea of 12 maritime miles and an exclusive maritime zone of 200 maritime miles.

<sup>32</sup> Article 593 Chilean Civilian Code, prior to the Law 18.565 of 1986.

<sup>33</sup> Patrick Griggs, Richard Williams, Jeremy Farr “Limitation of Liability for Maritime Claims”, Fourth Edition, LLP London Singapore, 2005, Chapter 12 (Chile) José Tomás Guzmán, p. 209.

Moreover, as Martínez notes regarding Article 6 of the Bunkers Convention on limitation of liability “this provision alone, though, does not harmonize an applicable international regime, since the shipowner’s liability will be determined by the law of the State where the pollutions occur and, as it is known, States have different rules on the subject”.<sup>34</sup>

Although Chile is not yet a party of the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC Convention), as amended<sup>35</sup>, considering that it is suggested by Article 6 of Bunkers Convention as an applicable regime, it is perfectly and legally possible to adopt this latter regime in Chile instead of maintaining a regime based in the 1969 CLC.

- h) The Bunkers Convention states that owners of ships with gross tonnage greater than 1000 registered in a State party are required to maintain insurance or other financial security<sup>36</sup>, whereas the Chilean Navigational Law requires the same obligation for ships and seaborne craft measuring more than 3.000 tonnes.<sup>37</sup>

In this regard it is estimated that the Bunkers Convention is more appropriate and updated, because it covers a major number of ships. It is worth recognizing at this point that the Chilean Navigation Law declare an important rule, as the Bunkers Convention also does, which is that the action on any claim for compensation may be brought directly against the insurer or other person providing financial security.<sup>38</sup>

- i) Regarding the obligations under Article 7 (2) of the Bunkers Convention, in issuing the certificates provided therein -attesting that insurance or other financial security is in force in accordance with the provisions of the Convention-, the Chilean Maritime Authority will be the responsible for such matter, which is The Directorate General of the Maritime Territory and Merchant Marine of Chile.
- j) Finally, in relation to the jurisdiction stated in the Bunkers Convention,<sup>39</sup> it will be necessary to amend Paragraph 4, Chapter IX of the Chilean Navigational Law,

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<sup>34</sup> Norman A. Martínez Gutiérrez, “Limitation of Liability in International Maritime Conventions”, Routledge, First published 2011, p. 165.

<sup>35</sup> Hereinafter referred to as LLMC Convention.

<sup>36</sup> Article 7 Bunkers Convention.

<sup>37</sup> Article 146 Chilean Navigation Law.

<sup>38</sup> Article 7(10) Bunkers Convention and Article 146 Chilean Navigation Law.

<sup>39</sup> Articles 9 and 10 Bunkers Convention.

adding new articles regarding the tribunal and procedure to entertain every incident that has caused pollution into the Chilean territory, including the territorial sea and the exclusive economic zone, or where preventive measures have been taken to prevent or minimise pollution damage in such territories; actions for compensation on civil liability for bunker oil pollution damage; and the recognition and enforceability of judgments of foreign courts having jurisdiction under Article 9 of the same Convention.

#### **4. Signature, Approval, and Ratification of a Convention under the Chilean legislation and their effects in the local law.**

Under the Chilean Constitution, the implementation of an international treaty into the domestic law is a task given to both executive and legislative politician powers.

Thus, the President of the Republic has the special attribution, among others, in conducting the political relations with foreign countries and international organizations, and carrying out the negotiations and conclude, signing and ratifying those treaties that he might consider convenient for the country interests, which shall be subject to the approval of the National Congress.<sup>40</sup>

The Congress can approve or reject those treaties before their ratification. The approval of a treaty will require the appropriate legal quorum, and submitted, as relevant to the formalities of a law. During the process of its approval, the Congress may suggest reservations and interpretative declarations to an international treaty, if they proceed in accordance with treaty itself and with the general rules of international law. In the same resolution of approval, the Congress can authorize to the President to issue Statutory Decrees that he considers necessary to full compliance with it.<sup>41</sup>

Also, it should be given due publicity to all the facts regarding with it, and once ratified then it is incorporated into domestic law through the promulgation of a Supreme Decree that must contain the whole text, which is published in the official gazette.

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<sup>40</sup> Article 32 N° 15 Constitution of the Republic of Chile.

<sup>41</sup> Articles 54 N° 1 y 64 Constitution of the Republic of Chile.

Accordingly, the legal procedure laid down to implement an international treaty into the laws of Chile basically takes place by the approval or adoption of it by the executive and legislative powers, but nothing preclude the possibility to incorporate all or part of it in a domestic law by the normal way of approving an internal law.

Although international treaties or conventions have the same effect as internal legislation, another issue related is the hierarchy of an international treaty under the Chilean legislation. Unfortunately, this matter is not expressly stated in the text of the Constitution, so it should be resolved through interpretation acts by State Organs, namely by the higher Tribunals of Justice.

### **Conclusions**

As it was stated along this work, the civil liability and compensation regime currently in force in Chile under the Navigational Law is extended to any maritime activity that causes pollution, including loss or damage caused outside a ship from the escape or discharge of bunker oil, as Bunkers Convention does.

By the year of 1978 what was meant to be regulated under the Chilean Navigation Law was the absolute prohibition of contamination into seawaters by oil spill or waste or other harmful or hazardous materials. Thus, the 1969 CLC in force in Chile at that time was considered as the applicable national regime in this matter in conjunction with other complementary rules. Certainly this was an innovative and relevant decision for that time, but today is clearly outdated.

Moreover, although the Bunkers Convention and the 1969 CLC, amended by 1992 CLC have different scopes of application, the first represents a complement of the second, by closing the gap in the international liability and compensation regime for pollution damage caused from the escape or discharge of bunker oil from a ship. So, if Chile has become a party of those latter Conventions that today are still in force, it is logical to consider the adoption of the Bunkers Convention into its laws, instead of keeping outdated regulations.

The Bunkers Convention represents an adequate, harmonic, and complete legal system on civil liability and compensation caused by bunker oil, and in that sense whether it is estimated that there is no legal vacuum of that subject in the Chilean law, it must also be recognized that the legislation currently in force is quite inadequate. Therefore, an urgent reform is needed to be consistent and harmonized with international law.

In considering the above, the State of Chile has decided to adopt through the procedure established in the Constitution, the International Convention on Civil Liability for Bunker Oil Pollution, 2001 (Bunkers Convention), grant to the Courts jurisdiction to entertain actions for compensation under the Convention; introduce legal provisions on responder immunity according to the Resolution adopted in the 2001 Conference; amend and repeal all provisions that are relevant in the Chapter IX the Chilean Navigational Law; and to provide a transitory provision that recognize the

right of the shipowner and the person or persons providing insurance or other financial security to limit liability according to article 6.1 (b) of the LLMC Convention.

For this, it will be necessary to authorize the President of the Republic to issue a Statutory Decree to full compliance with the Convention and the aforesaid provisions.

Consequently, a draft Supreme Decree adopting the Convention approved by the Chilean Congress and a Statutory Decree for full compliance of it, both issued by the President of The Republic, are enclosed to this work.

## **SUPREME DECREE**

That promulgates the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001.

Nº.\_\_\_\_. Santiago,\_\_\_\_\_, 2014.-

**WHEREAS**, Article 32, Nº 15, and Article 54, Nº 1), subsection 1 of the Political Constitution of the Republic of Chile.

### **CONSIDERING:**

That on 23 March 2001 was adopted the final text of the Bunkers Convention in the city of London, which entered in force internationally on 21 November 2008.

That the Bunkers Convention was approved by the National Congress, as stated in the Official Note Nº \_\_\_\_\_, \_\_\_\_\_, 2014, issued by the Honourable Senate.

That the Constitutional Court, by sentence \_\_\_\_\_ - 2014, of \_\_\_\_\_, 2014, stated that the Bunkers Convention submitted to its control, is given constitutional status.

That the ratification instrument of this Convention was deposited with the Secretary-General of the International Maritime Organization on \_\_\_\_\_, 2014.

### **DECREE:**

**Article 1:** The International Convention in Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention), adopted on 23 March 2001 is hereby promulgated into effect as law and shall be published an authorized copy of its text in the Official Gazette.

**Article 2:** The President of the Republic of Chile, according with the authorization granted by Congress, shall issue a Statutory Decree for full compliance of the aforesaid Convention, in the time limit of 90 days from the date of the publishing of this decree in the Official Gazette.

The President of the Republic of Chile is also authorized to grant jurisdiction to the courts set out in the Navigation Law to entertain actions for compensation under the Bunkers Convention, according to Article 9 of the same Convention; introduce legal provisions on responder immunity, according to the Resolution adopted in the 2001

Conference; to amend and repeal all that is irrelevant in the Chapter IX of the Chilean Navigation Law in all that is contrary to the spirit and text of the Convention; and in accordance with Article 6 of Bunkers Convention and considering that it is pending the accession of Chile to the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC Convention), to provide a transitory provision that recognizes the right of the shipowner and the person or persons providing insurance or other financial security to limit liability according to article 6.1 (b) of the aforesaid Convention.

**STATUTORY DECREE N° -2014.**

**Establishing rules with force of law for the implementation of the  
International Convention on Civil Liability for Bunker Oil Pollution Damage,  
2001 within the Republic of Chile.**

**D.F.L. N° - 2014.-** Santiago, \_\_\_\_\_, 2014.

**WHEREAS**, the powers given by the Congress after approving the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention), as stated in the Official Note N° \_\_\_\_\_, \_\_\_\_\_, 2014, issued by the Honourable Senate, and according to articles 54 (1) and 64 of the Political Constitution of the Republic of 1980, and article 2 of the Supreme Decree N° \_\_\_\_\_, published on \_\_\_\_\_ 2014 in the Official Gazette, promulgating the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention), and

**CONSIDERING:**

That one of the main missions of the International Maritime Organization is to develop international regulations and recommendations to prevent pollution of the seas by ships.

That Chile is a Member of the International Maritime Organization since 1972, and has permanently participated and worked towards their specialized responsibilities for safety, and security of shipping and the prevention of marine pollution of ships.

That according to the aforesaid Supreme Decree N° \_\_\_\_\_, and article 54 (1) of the Constitution of Chile in relation to article 64 of the same Act, the Congress authorized the President of the Republic to issue a Statutory Decree for full compliance with the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, in the time limit of 90 days from the date of the publishing of the aforesaid Decree in the Official Gazette, being also authorized to carry out the special provisions set out in Article 2 of the same Supreme Decree.

**IT IS HEREBY BEING RESOLVED TO:**

**APPROVE** the following additional rules to implement the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention), within the Republic of Chile that will govern the civil liability for bunker oil pollution damage.

**Article 1.-** For the purpose of this Law all the definitions, scope of application and other rules set forth in the Bunkers Convention, shall have full application, with the additional following rules:

- 1) “*Chilean Ship*” means any seagoing vessel and seaborne craft, of any type registered under the Chilean flag.
- 2) “*Foreign Ship*” means any seagoing vessel and seaborne craft, of any type registered under a foreign flag.
- 3) “*Maritime Authority*” means the Directorate General of Maritime Territory and Merchant, according to article 3 of Statutory Decree N° 292 and articles 2, 142 and 143 of Decree Law 2.222, who is responsible for supervise, implement and enforce national and international standards for environmental protection.
- 4) “*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.
- 5) “*Organization*” means the International Maritime Organization.
- 6) “*Secretary-General*” means the Secretary-General of the Organization.
- 7) “*Convention*” or “Bunkers Convention” means the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, promulgated in the Supreme Decree N° \_\_\_\_.
- 8) The Convention shall apply to pollution damage caused in the territory, including the territorial sea and the exclusive economic zone of the Republic of Chile where the incident occurred, according to articles 593 and 596 of the Chilean Civil Code,<sup>42</sup> and to preventive measures, wherever taken, to prevent or minimize such damage.

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<sup>42</sup> “Article 593. The adjacent sea to the distance of twelve nautical miles measured from the respective baselines, is territorial and national sea domain. But for objects related to the

- 9) The Convention and this Law shall not apply to pollution damage as defined in the International Convention on Civil Liability for Oil Pollution Damage, 1969 as amended by the 1992 Protocol, and, therefore, the rules of the latter Convention will be fully applicable.
- 10) The provisions of the 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.
- 11) For the purposes established in article 7 of the Bunkers Convention, the appropriate authority for issuing the certificate attesting that insurance or other financial security is in force, in respect of ships registered in Chile, shall be the Maritime Authority, according to article 3 a) of Statutory Decree N° 292 and article 97 of Decree Law 2.222.<sup>43</sup> Moreover, for the purposes of article 7 (7) the Maritime Authority shall determine the conditions of issue and validity of such certificate, and in respect of ships registered in a State not party to Bunkers Convention, it may be issued or certified by the same Maritime Authority.

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prevention and punishment of violations of laws and customs, fiscal, immigration or sanitary, the State exercises jurisdiction over a maritime area called contiguous zone, which extends to a distance of twenty-four nautical miles, similarly measured.

The waters on the landward side of the baselines of the territorial sea form part of the internal waters of the State. "

"Art 596. The adjacent sea extending to two hundred nautical miles from the baselines from which the breadth of the territorial sea is measured, and beyond the latter, is called exclusive economic zone. There, the State exercises sovereign rights for exploring, exploiting, conserving and managing the living and non-living natural resources of the waters overlying to the bed, bed and subsoil of the sea, and to develop such other activities with a view to exploring and economic exploitation of the area.

The State exercises exclusive sovereign rights over the continental shelf for the purpose of conservation, exploration and exploitation of their natural resources.

In addition, the State is responsible for all other jurisdiction and rights under international law to the exclusive economic zone and the continental shelf. "

<sup>43</sup> Article 3 a) of Statutory Decree N°292, which approved the Organic Law of the Directorate General of Maritime Territory and Merchant Marine states that the Directorate General of Maritime Territory and Merchant Marine is responsible for the safe navigation and the protection of life at sea, by controlling the compliance of national and international regulations on these issues.

Article 97 of Decree-Law 2.222, Navigation Law, states that the Maritime Authority is responsible for monitoring the compliance of all legal and statutory rules, as well as all administrative resolutions in force or that must be implemented in waters of national jurisdiction.

**Article 2.-** Add two new articles to paragraph 4 of the Decree Law 2.222, Navigational Law regarding the Tribunal and procedure, as follows:

- a) “A judge of the Court of Appeals that has jurisdiction over the place where the incident has caused pollution damage in the territory, including the territorial sea and the exclusive economic zone, or where preventive measures have been taken to prevent or minimise pollution damage in such territories, or actions for compensation against the shipowner, insurer or other person providing security for the shipowner’s liability, or against ships owned by the State and used for commercial purposes, will entertain in first instance of the judgments on civil liability for bunker oil pollution damage as stated in the Bunkers Convention 2001, by presenting a claim before that Tribunal. The claim shall be instituted in accordance with the general provisions of the Civil Procedure Code and the special rules established in this paragraph”.
- b) “Judgments of foreign Courts having jurisdiction under article 9 of the Convention in any of the circumstances above stated are recognized and declared enforceable in Chile, unless the judgment was fraudulently obtained or the defendant was not given reasonable notice and fair opportunity to present his case.”

**Article 3.-** Under the scope of application of the Bunkers Convention, and subject to its Article 3(6), no claim for compensation for damage may be made against any person taking preventive measures, unless the damage resulted from their personal act or omission, committed with the intent to cause damage, or recklessly and with knowledge that such damage would probably result.

**Article 4:** Paragraph 2°, Chapter IX, Articles 144 to 148 inclusive of the Navigation Law regarding the “Civil Liability for damage from spills of oil and other noxious substances”, are hereby repealed and replaced with the regulations stated in this Statutory Decree and with the provisions provided by the International Convention on Civil Liability for Bunker Oil Pollution, 2001.

**Transitory Provision:** Pending the accession of Chile to the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC Convention) the shipowner and the person or persons providing insurance or other financial security

may limit liability, arising on any distinct occasion, according to article 6.1 (b) of the aforesaid Convention, which states:

- (i) 167,000 Units of Account for a ship with a tonnage not exceeding 500 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 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.

BE IT CONSIDERED, REGISTERED, COMMUNICATED AND PUBLISHED it in the Official Gazette.

## ANNEX I

### **International Convention on Civil Liability for Bunker Oil Pollution Damage**

**Done at: London**

**Date enacted: 2001-03-23**

**In force: 2008-11-21**

The States Parties to this Convention,

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

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

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

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

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

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

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

Have agreed as follows:

## **Article 1**

### **Definitions**

For the purposes of this Convention:

1. "Ship" means any seagoing vessel and seaborne craft, of any type whatsoever.
2. "Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.
3. "Shipowner" means the owner, including the registered owner, bareboat charterer, manager and operator of the ship.
4. "Registered owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "registered owner" shall mean such company.
5. "Bunker oil" means any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil.
6. "Civil Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1992, as amended.
7. "Preventive measures" means any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage.
8. "Incident" means any occurrence or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage.
9. "Pollution damage" means:
  - (a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of bunker oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such

impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and

(b) the costs of preventive measures and further loss or damage caused by preventive measures.

10. "State of the ship's registry" means, in relation to a registered ship, the State of registration of the ship and, in relation to an unregistered ship, the State whose flag the ship is entitled to fly.

11. "Gross tonnage" means gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex 1 of the International Convention on Tonnage Measurement of Ships, 1969.

12. "Organization" means the International Maritime Organization.

13. "Secretary-General" means the Secretary-General of the Organization.

## **Article 2**

### **Scope of application**

This Convention shall apply exclusively:

(a) to pollution damage caused:

(i) in the territory, including the territorial sea, of a State Party, and

(ii) in the exclusive economic zone of a State Party, established in accordance with international law, or, if a State Party has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;

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

## **Article 3**

### **Liability of the shipowner**

1. Except as provided in paragraphs 3 and 4, the shipowner at the time of an incident shall be liable for pollution damage caused by any bunker oil on board or originating from the ship, provided that, if an incident consists of a series of occurrences having the same origin, the liability shall attach to the shipowner at the time of the first of such occurrences.

2. Where more than one person is liable in accordance with paragraph 1, their liability shall be joint and several.

3. No liability for pollution damage shall attach to the shipowner if the shipowner proves that:

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

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

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

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

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

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

#### **Article 4**

##### **Exclusions**

1. This Convention shall not apply to pollution damage as defined in the Civil Liability Convention, whether or not compensation is payable in respect of it under that Convention.

2. Except as provided in paragraph 3, the provisions of this Convention shall not apply to warships, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on Government non-commercial service.

3. A State Party may decide to apply this Convention to its warships or other ships described in paragraph 2, in which case it shall notify the Secretary-General thereof specifying the terms and conditions of such application.

4. With respect to ships owned by a State Party and used for commercial purposes, each State shall be subject to suit in the jurisdictions set forth in article 9 and shall waive all defences based on its status as a sovereign State.

## **Article 5**

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

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

## **Article 6**

### **Limitation of liability**

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

## **Article 7**

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

1. The registered owner of a ship having a gross tonnage greater than 1000 registered in a State Party shall be required to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover the liability of the registered owner for pollution damage in an amount equal to the limits of liability under the applicable national or international limitation regime, but in all cases, not exceeding an amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

2. A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a

State Party it may be issued or certified by the appropriate authority of any State Party. This certificate shall be in the form of the model set out in the annex to this Convention and shall contain the following particulars:

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

3. (a) A State Party may authorize either an institution or an organization recognized by it to issue the certificate referred to in paragraph 2. Such institution or organization shall inform that State of the issue of each certificate. In all cases, the State Party shall fully guarantee the completeness and accuracy of the certificate so issued and shall undertake to ensure the necessary arrangements to satisfy this obligation.

(b) A State Party shall notify the Secretary-General of :

- (i) the specific responsibilities and conditions of the authority delegated to an institution or organization recognised by it;
- (ii) the withdrawal of such authority; and
- (iii) the date from which such authority or withdrawal of such authority takes effect.

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

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

4. The certificate shall be in the official language or languages of the issuing State. If the language used is not English, French or Spanish, the text shall include a translation into one of these languages and, where the State so decides, the official language of the State may be omitted.

5. The certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a State Party, with the authorities issuing or certifying the certificate.

6. An insurance or other financial security shall not satisfy the requirements of this article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2 of this article, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 5 of this article, unless the certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this article.

7. The State of the ship's registry shall, subject to the provisions of this article, determine the conditions of issue and validity of the certificate.

8. Nothing in this Convention shall be construed as preventing a State Party from relying on information obtained from other States or the Organization or other international organisations relating to the financial standing of providers of insurance or financial security for the purposes of this Convention. In such cases, the State Party relying on such information is not relieved of its responsibility as a State issuing the certificate required by paragraph 2.

9. Certificates issued or certified under the authority of a State Party shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other States Parties as having the same force as certificates issued or certified by them even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the insurance certificate is not financially capable of meeting the obligations imposed by this Convention.

10. Any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the registered owner's liability for pollution

damage. In such a case the defendant may invoke the defences (other than bankruptcy or winding up of the shipowner) which the shipowner would have been entitled to invoke, including limitation pursuant to article 6. Furthermore, even if the shipowner is not entitled to limitation of liability according to article 6, the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained in accordance with paragraph 1. Moreover, the defendant may invoke the defence that the pollution damage resulted from the wilful misconduct of the shipowner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the shipowner against the defendant. The defendant shall in any event have the right to require the shipowner to be joined in the proceedings.

11. A State Party shall not permit a ship under its flag to which this article applies to operate at any time, unless a certificate has been issued under paragraphs 2 or 14.

12. Subject to the provisions of this article, each State Party shall ensure, under its national law, that insurance or other security, to the extent specified in paragraph 1, is in force in respect of any ship having a gross tonnage greater than 1000, wherever registered, entering or leaving a port in its territory, or arriving at or leaving an offshore facility in its territorial sea.

13. Notwithstanding the provisions of paragraph 5, a State Party may notify the Secretary-General that, for the purposes of paragraph 12, ships are not required to carry on board or to produce the certificate required by paragraph 2, when entering or leaving ports or arriving at or leaving from offshore facilities in its territory, provided that the State Party which issues the certificate required by paragraph 2 has notified the Secretary-General that it maintains records in an electronic format, accessible to all States Parties, attesting the existence of the certificate and enabling States Parties to discharge their obligations under paragraph 12.

14. If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this article relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the appropriate authority of the State of the ship's registry stating that the ship is owned by that State and that the ship's liability is covered within the limit prescribed in accordance with paragraph 1. Such a certificate shall follow as closely as possible the model prescribed by paragraph 2.

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

## **Article 8**

### **Time limits**

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

## **Article 9**

### **Jurisdiction**

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

## **Article 10**

### **Recognition and enforcement**

1. Any judgement given by a Court with jurisdiction in accordance with article 9 which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognised in any State Party, except:
  - (a) where the judgement was obtained by fraud; or

(b) where the defendant was not given reasonable notice and a fair opportunity to present his or her case.

2. A judgement recognised under paragraph 1 shall be enforceable in each State Party as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be re-opened.

## **Article 11**

### **Supersession clause**

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

## **Article 12**

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

1. This Convention shall be open for signature at the Headquarters of the Organization from 1 October 2001 until 30 September 2002 and shall thereafter remain open for accession.

2. States may express their consent to be bound by this Convention by:

(a) signature without reservation as to ratification, acceptance or approval;

(b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or

(c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

4. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention with respect to all existing State Parties, or after the completion of all measures required for the entry into force of the amendment with respect to those State Parties shall be deemed to apply to this Convention as modified by the amendment.

## **Article 13**

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

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.
2. Any such declaration shall be notified to the Secretary-General and shall state expressly the territorial units to which this Convention applies.
3. In relation to a State Party which has made such a declaration:
  - (a) in the definition of "registered owner" in article 1(4), references to a State shall be construed as references to such a territorial unit;
  - (b) references to the State of a ship's registry and, in relation to a compulsory insurance certificate, to the issuing or certifying State, shall be construed as referring to the territorial unit respectively in which the ship is registered and which issues or certifies the certificate;
  - (c) references in this Convention to the requirements of national law shall be construed as references to the requirements of the law of the relevant territorial unit; and
  - (d) references in articles 9 and 10 to courts, and to judgements which must be recognized in States Parties, shall be construed as references respectively to courts of, and to judgements which must be recognized in, the relevant territorial unit.

## **Article 14**

### **Entry into force**

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

2. For any State which ratifies, accepts, approves or accedes to it after the conditions in paragraph 1 for entry into force have been met, this Convention shall enter into force three months after the date of deposit by such State of the appropriate instrument.

## **Article 15**

### **Denunciation**

1. This Convention may be denounced by any State Party at any time after the date on which this Convention comes into force for that State.
2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General.
3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.

## **Article 16**

### **Revision or amendment**

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

## **Article 17**

### **Depositary**

1. This Convention shall be deposited with the Secretary-General.
2. The Secretary-General shall:
  - (a) inform all States which have signed or acceded to this Convention of:
    - (i) each new signature or deposit of instrument together with the date thereof;
    - (ii) the date of entry into force of this Convention;

(iii) the deposit of any instrument of denunciation of this Convention together with the date of the deposit and the date on which the denunciation takes effect; and

(iv) other declarations and notifications made under this Convention.

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

### **Article 18**

#### **Transmission to United Nations**

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

### **Article 19**

#### **Languages**

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

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

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

Annex

Certificate of insurance or other financial security in respect of civil liability for bunker oil pollution damage

## ANNEX II

### CHILEAN NAVIGATIONAL LAW

#### TITULO IX

##### De la Contaminación

##### **Párrafo 1 Del Derrame de Hidrocarburos y otras Substancias Nocivas**

**Art. 142.** Se prohíbe absolutamente arrojar lastre, escombros o basuras y derramar petróleo o sus derivados o residuos, aguas de relaves de minerales u otras materias nocivas o peligrosas, de cualquier especie, que ocasionen daños o perjuicios en las aguas sometidas a la jurisdicción nacional, y en puertos, ríos y lagos.

La Dirección y sus autoridades y organismos dependientes tendrán la misión de cautelar el cumplimiento de esta prohibición y, a este efecto, deberán:

- 1) Fiscalizar, aplicar y hacer cumplir todas las normas, nacionales e internacionales, presentes o futuras, sobre preservación del medio ambiente marino, y sancionar su contravención, y
- 2) Cumplir las obligaciones y ejercer las atribuciones que en los Convenios citados en el artículo siguiente se asignan a las Autoridades del País Contratante, y promover en el país la adopción de las medidas técnicas que conduzcan a la mejor aplicación de tales Convenios y a la preservación del medio ambiente marino que los inspira.

El reglamento determinará la forma cómo la Dirección, las Autoridades Marítimas y sus organismos dependientes ejercerán las funciones que les asignan este y el siguiente artículo.

En el mismo reglamento se establecerán las multas y demás sanciones para los casos de contravenciones, aplicables al propietario de la instalación; al propietario, armador u operador de la nave o artefacto naval, o a las personas directamente responsables del derrame o infracción.

La Dirección adquirirá los equipos, elementos, compuestos químicos, y demás medios que se requieran para contener o eliminar los daños causados por derrames, así como para la adopción, difusión y promoción de las medidas destinadas a prevenir la contaminación de las aguas sometidas a la jurisdicción nacional.

Sólo la Autoridad Marítima, en conformidad al reglamento, podrá autorizar alguna de las operaciones señaladas en el inciso primero, cuando ellas sean necesarias, debiendo señalar el

lugar y la forma de proceder.

Si debido a un siniestro marítimo o a otras causas, se produce la contaminación de las aguas por efecto de derrame de hidrocarburos o de otras sustancias nocivas o peligrosas, la Autoridad Marítima respectiva adoptará las medidas preventivas que estime procedentes para evitar la destrucción de la flora y fauna marítimas, o los daños al litoral de la República.

**Art. 143.** La Dirección es la autoridad chilena encargada de hacer cumplir, dentro de la jurisdicción nacional, las obligaciones y prohibiciones establecidas en el Convenio Internacional para Prevenir la Contaminación de las Aguas del Mar por Hidrocarburos, de 1954, incluyendo las enmiendas aprobadas por la Conferencia Internacional para Prevenir la Contaminación de las Aguas del Mar por Hidrocarburos, de 1962, y las enmiendas aprobadas mediante resolución A. 175 (VI) de la Sexta Asamblea de la Organización Marítima Consultiva Intergubernamental, de 21 de Octubre de 1969, y su Anexo sobre "Libro de Registro de Hidrocarburos", en los términos aprobados por el decreto ley N° 1.807, de 1977.

La Dirección es también la autoridad encargada de hacer cumplir en el territorio de la República y en las aguas sometidas a la jurisdicción nacional, la prohibición de vertimientos y las medidas preventivas que se establecen en el Convenio sobre Prevención de la Contaminación del Mar por Vertimiento de Desechos y otras Materias, suscrito en Londres el 29 de Diciembre de 1972, y sus Anexos I, II y III, según el tenor de dichos Convenio y Anexos, aprobados por el decreto ley N° 1.809, de 1977. Corresponde igualmente a la Dirección conceder los permisos que se contemplan en el artículo VI del citado convenio.

La Dirección podrá cobrar derechos por el estudio y la concesión de permisos especiales para el vertimiento de determinadas materias, cuando no constituyan peligro de contaminación presente o futura, de acuerdo con las pautas del Convenio mencionado en el inciso precedente.

**Párrafo 2°.- De la Responsabilidad Civil por los Daños Derivados de los Derrames de Hidrocarburos y otras Sustancias Nocivas.**

**Art. 144.** El mismo régimen de responsabilidad civil establecido en el Convenio Internacional sobre Responsabilidad Civil por Daños causados por la Contaminación de las Aguas del Mar por Hidrocarburos, del 29 de Noviembre de 1969, aprobado por el decreto ley N° 1.808, de 1977, y promulgado por D.S. N° 475, del Ministerio de Relaciones Exteriores, de 12 de Agosto de 1977, y sin perjuicio del campo de aplicación de este Convenio, regirá para la indemnización

de los perjuicios que ocasione el derrame de cualquier clase de materias o desechos, que ocurra dentro de las aguas sometidas a la jurisdicción nacional, sea cual fuere la actividad que estuviere realizando la nave o artefacto naval que lo produjo; con las siguientes normas complementarias:

1. La responsabilidad por los daños que se causen afectará solidariamente al dueño, armador u operador a cualquier título de la nave, naves o artefacto naval que produzcan el derrame o descarga. Cuando se produzcan derrames o descargas provenientes de dos o más naves, que causen daños a raíz de los mismos hechos, y fuere procedente la responsabilidad, ésta será solidaria entre todos los dueños, armadores u operadores a cualquier título de todas las naves de donde provengan aquellos, salvo en los casos de colisión en que sea razonablemente posible prorratear la responsabilidad.
2. El propietario, armador u operador de la nave o artefacto naval será responsable de los daños que se produzcan, a menos que pruebe que ellos fueron causados exclusivamente por:
  - a) Acto de guerra, hostilidades, guerra civil o insurrección; o un fenómeno natural de carácter excepcional, inevitable e irresistible, y
  - b) Acción u omisión dolosa o culpable de un tercero extraño al dueño, armador u operador a cualquier título del barco o artefacto naval. Las faltas, imprudencias o negligencias de los dependientes del dueño, armador u operador o las de la dotación, no podrán ser alegadas como causal de la presente excepción de responsabilidad.
3. Por "siniestro", para estos efectos, se entiende todo acontecimiento o serie de acontecimientos que tengan el mismo origen y que produzcan o puedan producir daños por derrames o contaminación en aguas sometidas a la jurisdicción nacional o en sus costas adyacentes.
4. Por "sustancia contaminante" se entiende toda materia cuyo vertimiento o derrame esté específicamente prohibido, en conformidad al reglamento.
5. Se presume que el derrame o vertimiento de sustancias contaminantes del medio ambiente marino produce daño ecológico.

**Art. 145.** El propietario, armador u operador de la nave o artefacto naval, podrá limitar la responsabilidad establecida en el artículo anterior por los perjuicios derivados de cada siniestro hasta un máximo equivalente en moneda nacional a dos mil francos por tonelada de registro de la nave o artefacto naval, causante de los perjuicios. Esta responsabilidad no excederá en ningún caso del equivalente a doscientos diez millones de francos. Si el siniestro ha sido

causado por falta o culpa del propietario, naviero u operador, perderá el derecho a la limitación de responsabilidad aquí establecida.

En los casos en que no corresponda aplicar exclusivamente las normas del Convenio citado en el artículo precedente, el ejercicio del derecho a limitar las indemnizaciones se regirá por las siguientes reglas:

1) El que pretende gozar de la limitación deberá constituir ante el tribunal que establece este título o ante el que pudiere ser también competente según el Convenio, un fondo cuya cuantía ascienda al límite de responsabilidad dispuesto en este artículo. El fondo podrá constituirse consignando la suma o depositando una garantía bancaria o de otra clase, considerada suficiente por el tribunal. Ejercitado el derecho a limitación por alguno de los responsables, sus efectos beneficiarán a todos los otros que hubieran tenido derecho a impetrarlo, según lo dispuesto en el inciso primero.

2) El fondo será distribuido entre los acreedores a prorrata del importe de sus respectivas reclamaciones, previamente aceptadas. Pero los gastos o sacrificios razonables en que hubiera incurrido la autoridad para prevenir o minimizar los daños por contaminación, gozarán de preferencia sobre los demás créditos del fondo. Y si los responsables no ejercitaren el derecho a limitar responsabilidad, aquellos gastos o sacrificios razonables gozarán del mismo privilegio que sobre la nave correspondería a sus salvadores. Esta misma regla de prelación beneficiará a los gastos y sacrificios razonables en que incurriere algún tercero en forma espontánea o a requerimiento de la autoridad, para prevenir o minimizar los daños, sean sobre el mar o sus costas adyacentes. Con todo cuando se trate de gastos o sacrificios que beneficiaron a bienes del propio reclamante, ellos no gozarán de la preferencia dispuesta en este inciso.

Si los gastos o sacrificios razonables para prevenir o minimizar los daños hubieren sido ejecutados por el propio responsable del derrame, su monto previamente aceptado podrá cobrarse a prorrata con los demás acreedores generales del fondo.

3) Si antes de hacerse efectiva la distribución del fondo, alguno de los responsables o sus dependientes, o algún asegurador o garante, hubieran pagado indemnizaciones basadas en perjuicios por derrames que se comprendan en el fondo, se subrogará hasta la totalidad del importe pagado en los derechos que la persona indemnizada hubiere tenido en la repartición del fondo. Esta subrogación no excluye las que también pudieren operar conforme a las reglas generales.

4) Cualquiera de los responsables o terceros interesados podrá solicitar al tribunal que se reserven las sumas adecuadas para cubrir las cuotas de aquellos créditos que aún no estuvieren

reconocidos; pero que de estarlo, habrían tenido derecho a resarcirse con los demás imputables al fondo.

5) El franco mencionado en este artículo será una unidad constituida por sesenta y cinco miligramos y medio de oro fino de novecientas milésimas. Para su conversión a moneda nacional se tomará por base el tipo de equivalencia que certifique el Banco Central de Chile. El monto del fondo será el que resulte de aplicar la equivalencia que corresponda al día de su constitución, sobre los factores establecidos en el inciso primero de este artículo.

6) Para los efectos de este artículo se entenderá que el arqueo de la nave o artefacto naval, es el arqueo neto más el volumen que, para determinar el arqueo neto, se haya deducido del arqueo bruto por concepto de espacio reservado a la sala de máquinas. Cuando se trate de una nave o artefacto naval que no pueda medirse aplicando las reglas corrientes para el cálculo del arqueo, se tendrá por arqueo para estos efectos, al cuarenta por ciento del peso en toneladas (de dos mil doscientas cuarenta libras de peso) de la carga que pueda transportar o soportar la nave o artefacto.

7) El asegurador u otra persona que provea la garantía financiera por cualquiera de los responsables, podrá constituir el fondo en las mismas condiciones y con los mismos efectos dispuestos en este artículo, como si lo constituyera alguno de los responsables.

8) Cuando después de un siniestro alguno de los que pudieren ser responsables por los daños, constituyere el fondo de que trata este artículo y tuviere derecho a limitar su responsabilidad, no podrán perseguirse otros bienes de su propiedad. Asimismo, cesarán los arraigos, retenciones o embargos de la nave u otros bienes, que se hubieren impuesto como garantía del resarcimiento de los perjuicios originados por ese siniestro.

**Art. 146.** Toda nave o artefacto naval que mida más de tres mil toneladas, según las bases de medición dispuestas en el artículo precedente, deberá suscribir un seguro u otra garantía financiera otorgada por un banco o un fondo internacional de indemnizaciones, por el importe a que asciendan los límites de responsabilidad establecidos en dicho artículo. La autoridad marítima que le hubiere dado el certificado de matrícula, expedirá además otro que acredite que existe ese seguro o garantía. Este último certificado será formalizado siguiendo, tan de cerca como sea posible, el modelo descrito en el Anexo del decreto supremo N° 475, del Ministerio de Relaciones Exteriores, de 12 de Agosto de 1977, que promulgó el "Convenio Internacional sobre Responsabilidad Civil por Daños causados por la contaminación de las Aguas del Mar por Hidrocarburos", citado en el artículo 144. El certificado deberá llevarse a bordo y una copia

se conservará en poder de la autoridad que matriculó la nave o artefacto naval.

El reglamento indicará las demás condiciones de expedición, vigencia y validez del certificado de garantía establecido por esta norma.

Podrá interponerse cualquier acción para el resarcimiento de daños, o por gastos y sacrificios razonables para prevenirlos o disminuirlos, contra el asegurador o contra cualquiera que hubiere otorgado la garantía financiera. El garante demandado podrá ampararse en los límites de responsabilidad previstos en el artículo precedente. Podrá oponer también las excepciones o defensas que hubiera podido invocar su afianzado, excepto las personales de éste en su contra. El demandado podrá exigir que su afianzado concorra con él al procedimiento.

Los depósitos constituidos por un seguro u otra garantía financiera, que se consignent para limitar responsabilidad, se destinarán en forma exclusiva al cumplimiento de las obligaciones e indemnizaciones que se imponen en este párrafo.

Los derechos a indemnizaciones y las obligaciones que nazcan de lo preceptuado en este párrafo, prescribirán en tres años, contados desde la fecha en que se produjo el daño o se realizaron los actos que dan acción de reembolso. Sin embargo, no podrá interponerse acción alguna después de seis años contados desde la fecha del siniestro. Cuando el siniestro consista en una serie de acontecimientos, el plazo de seis años se computará desde la fecha inicial del más antiguo.

Las normas del presente párrafo primarán, en su caso, sobre lo establecido en los artículos 879 y siguientes del Código de Comercio, respecto del abandono limitativo y sus efectos.

**Art. 147.** En el caso de instalaciones terrestres que produzcan daños al medio ambiente marino por vertimiento o derrame de sustancias contaminantes, el dueño de ellas será siempre civilmente responsable y deberá indemnizar todo perjuicio que se haya causado.

Es aplicable, para los fines de este artículo, lo dispuesto en los números 1, 2, 3, 4 y 5 del artículo 144, en lo que fuere compatible.

**Art. 148.** Las disposiciones de este párrafo no se aplicarán a los buques de guerra nacionales u otros operados directamente por el Estado en actividades no comerciales. Pero sus capitanes y las autoridades de que dependan, deberán adoptar todas las medidas tendientes a evitar siniestros.

### **Párrafo 3° De las Sanciones y Multas**

**Art. 149.** Corresponde a la Dirección aplicar las sanciones y multas por contravención de las normas del párrafo 1° de este Título, en conformidad al reglamento.

La misma autoridad aplicará las sanciones en que incurran las naves chilenas que efectúen descargas ilegales de hidrocarburos fuera de las aguas sometidas a la jurisdicción nacional, si hubieren quedado impunes.

**Art. 150.** Las sanciones y multas que procedan se aplicarán administrativamente por la Dirección. Salvo lo previsto en los incisos siguientes, las multas no excederán de 1.000.000 de pesos oro.

Además de las sanciones que corresponda aplicar a los miembros de la dotación de las naves por incumplimiento de sus deberes profesionales, en el caso de infracción de lo dispuesto en los artículos III y IX y demás obligaciones impuestas por el Convenio Internacional para prevenir la Contaminación de las Aguas del Mar por Hidrocarburos, se sancionará al dueño o armador de la nave de que provenga la descarga ilegal, con una multa de hasta 5.000.000 de pesos oro, cualquiera sea el lugar en que se haya cometido la infracción.

Con la misma multa se sancionarán las infracciones a las normas del Convenio sobre Prevención de la Contaminación del Mar por Vertimiento de Desechos y otras Materias, sin perjuicio de que la Autoridad Marítima dicte las demás medidas compulsivas que fueren necesarias para poner término al vertimiento nocivo.

El reglamento establecerá la graduación de estas multas, considerando el volumen de la descarga o derrame ilegales u otros aspectos que agraven o atenúen los efectos de un siniestro. Asimismo, el reglamento establecerá las sanciones que se aplicarán a los que deban dar cuenta de un derrame o descarga ilegales y omitieren hacerlo.

La aplicación de sanciones y multas por un hecho determinado, no impide la aplicación de otras en casos de reiteración.

**Art. 151.** Las sanciones y multas por las infracciones a que se refieren los artículos anteriores, se aplicarán previa investigación sumaria de los hechos. Los afectados podrán apelar de ellas o solicitar su reconsideración al Director, previa consignación de la multa impuesta, dentro del plazo fatal de quince días, contados desde la notificación. El procedimiento a seguir en estos casos será el mismo que establezca el reglamento indicado en el artículo 87.

**Art. 152.** El capitán de la nave infractora, sin perjuicio del arraigo a que ésta pueda estar sujeta, no podrá abandonar el país si no paga la multa impuesta al dueño o armador o no afianza su pago a satisfacción del Director.

#### **Párrafo 4° Del Tribunal y del Procedimiento**

**Art. 153.** Un ministro de la Corte de Apelaciones que tenga competencia respecto del lugar en que los hechos de la causa hayan acaecido, conocerá en primera instancia:

- a) De los juicios para exigir la restitución o indemnización de los gastos o sacrificios en que se haya incurrido por la adopción de medidas preventivas razonables para prevenir o minimizar los daños por contaminación que puedan derivar de algún siniestro, cualquiera que sea el lugar en que haya ocurrido, que provocó aquellas medidas o sacrificios;
- b) De los juicios sobre indemnización de los perjuicios que se causen al Estado o a particulares por derrames o contaminación, sea del medio marino o en el litoral, provenientes de un derrame o vertimiento en el mar de cualquier combustible, desecho, materia o demás elementos a que se refiere esta ley;
- c) De toda otra acción que nazca de la aplicación de los decretos leyes números 1.807, 1.808 y 1.809, todos de 1977, que aprobaron, respectivamente, el Convenio Internacional para prevenir la Contaminación de las Aguas del Mar por Hidrocarburos, el Convenio Internacional sobre Responsabilidad Civil por Daños Causados por la Contaminación de las Aguas del Mar por Hidrocarburos y el Convenio sobre Prevención de la Contaminación del Mar por Vertimiento de Desechos y otras Materias; que no haya sido sometida específicamente al conocimiento de otro tribunal o autoridad, con excepción de los juicios sobre constitución y repartimiento del fondo de limitación a que pudiera haber lugar.

**Art. 154.** El mismo tribunal conocerá también de las acciones que nazcan de una colisión o abordaje, cuando de ello se deriven perjuicios por contaminación.

**Art. 155.** Las acciones directas que esta ley o los convenios internacionales citados en la letra c) del artículo 153, conceden contra el asegurador o la persona que haya proporcionado la garantía para las indemnizaciones, podrán interponerse por los interesados ante el tribunal señalado en el artículo 153, ante el tribunal extranjero que corresponda según el domicilio del

demandado, o ante el que señale en el documento de garantía, a elección del demandante.

**Art. 156.** En los juicios a que se refieren los artículos anteriores se aplicará el procedimiento del juicio ordinario, pero se suprimirán los escritos de réplica y dúplica.

**Art. 157.** La prueba en estos juicios se rendirá de acuerdo con las reglas generales y las siguientes normas especiales:

- a) Además de los medios probatorios señalados en el artículo 341 del Código de Procedimiento Civil, será admisible, a juicio exclusivo del tribunal, cualquier clase de prueba;
- b) El tribunal, en cualquier estado del juicio, podrá decretar de oficio las diligencias probatorias que estime conveniente. Si se tratare de la inspección personal del tribunal, los gastos en que éste incurra serán pagados por la parte que solicite la diligencia, salvo que ésta haya sido dispuesta de oficio por el tribunal o que éste la estime necesaria para el esclarecimiento de la cuestión, en cuyo caso podrá ordenar que las partes consignen una cantidad prudencial para afrontar tales gastos, y todo sin perjuicio de lo que en definitiva se resuelva sobre el pago de costas; y
- c) La prueba se apreciará en conciencia.

**Art. 158.** El tribunal, durante toda la tramitación del proceso, actuará asesorado de un perito naval, que será designado de entre una lista de Oficiales Generales o Superiores Ejecutivos de la Armada, en servicio activo o en retiro, lista que el Comandante en Jefe de la Armada remitirá todos los años, en el mes de Enero, a la Cortes de Apelaciones a que se refiere el artículo 153. El tribunal podrá solicitar del perito naval los informes que estime necesarios durante el curso del juicio. En todo caso, antes de dictar sentencia y siempre que no hubiere emitido opinión sobre la materia, el tribunal deberá solicitarle de oficio, que informe sobre las causas que originaron el siniestro y sus responsables, o sobre el grado de responsabilidad que atribuya a los capitanes, en casos de abordaje o colisión. Este informe se pondrá en conocimiento de las partes y, transcurrido el plazo fatal de tres días, el tribunal citará para sentencia. La actuación del perito naval no obsta a que las partes puedan solicitar la designación de otros peritos que estimaren convenientes para sus intereses.

**Art. 159.** El monto de los honorarios provisionales del perito naval, mientras el juicio esté pendiente, será fijado por el tribunal en única instancia, en la misma resolución en que lo

nombre, señalándole una remuneración mensual que será pagada por las partes en la proporción y fecha que para cada una se determine, sin perjuicio de lo que en definitiva se resuelva sobre el pago de costas y sobre el monto definitivo del honorario.

**Art. 160.** Excepto el caso señalado en el artículo 155, todas las acciones que se ejerciten en Chile por las mismas partes u otros afectados y que provengan de los mismos hechos, se acumularán ante el tribunal que este título establece.

**Art. 161.** Cuando la materia disputada, en los casos a que se refiere el artículo 153, sea susceptible de apreciación pecuniaria, y el monto de la suma demandada no exceda de ciento veinte unidades tributarias, las acciones que por ese artículo se conceden podrán también intentarse en primera instancia ante el tribunal ordinario que tenga competencia territorial respecto del lugar en que los hechos de la causa hayan acaecido, aplicándose a la tramitación del juicio las restantes normas de este título, excepto los artículos 158 y 159.

**Art. 162.** De los juicios de que trata este título conocerá en segunda instancia la Corte de Apelaciones de Valparaíso.

**Art. 163.** DEROGADO

## **Bibliography**

### **Books**

- 1.- Patrick Griggs, Richard Williams, Jeremy Farr “Limitation of Liability for Maritime Claims”, Fourth Edition, LLP London Singapore, 2005.
- 2.- Norman Martínez Gutiérrez., “Limitation of Liability in International Maritime Conventions”, Routledge, First published 2011.

### **Articles**

- 1.- Norman Martínez Gutiérrez, “The Bunkers Convention and Shipowner’s Right to Limit Liability”, Journal of Maritime & Commerce, Vol. 43, N° 2, April, 2012.
- 2.- Norman Martínez Gutiérrez, “Brasil y la Responsabilidad Civil del Propietario de un Buque Nacida de Daños Debidos a Contaminación por Hidrocarburos”, Revista Electronica Direito e Política, [www.univali.br/direitoepolitica](http://www.univali.br/direitoepolitica) - ISSN 198 0-7791.
- 3.- Ricardo San Martin Padovani, “La Experiencia de la Ley de Navegación Chilena”, <http://congresomaritimo.org/congreso/wp-content/uploads/2013/01/3.-La-experiencia-de-la-Ley-de-navegaci%C3%B3n-chilena.-Ricardo-San-Mart%C3%ADn-Padovani..pdf>.
- 4.- José Juste-Ruiz, “The IMO Conventions on Civil Liability for Oil Pollution Damage”, Mepielan e Bulletin, Friday, 05 April 2013. <http://www.mepielanbulletin.gr/default.aspx?pid=18&CategoryId=4&ArticleId=138&Article=European-Courts-Go-beyond-the-IMO-Conventions-on-Civil-Liability-for-Air-Pollution-Damage>
- 5.- Jaime Rodrigo de Larrucea, “Nuevos Esquemas de Responsabilidad Civil por Daños de Contaminación Marina: El Convenio Bunkers 2001 y el Convenio HNS 96”, <https://upcommons.upc.edu/eprints/bitstream/2117/13057/1/EI%20Convenio%20BUNKERS%202001.pdf>.

### **International Conventions**

- 1.- International Convention on Civil Liability for Oil Pollution Damage, 1969 (1969 CLC).
- 2.- Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage of 29 November 1969 (1992 CLC).
- 3.- International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention).
- 4.- Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC Convention).

5.- International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention).

**National Constitution, Codes, Laws and Decrees (Chile)**

- 1.- Political Constitution of the Republic of Chile, 1980.
- 2.- Chilean Civil Code, 1857, as amended.
- 3.- Chilean Navigation Law N° 2.222, 1978.
- 4.- Statutory Decree N°292, which approved the Organic Law of the Directorate General of Maritime Territory, 1953.
- 5.- Decree N° 475, 12 August 1977.
- 6.- Decree N° 101, 16 April 2003.