



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



**A Proclamation to Implement the International
Convention on Civil Liability for Bunker Oil Pollution
Damage, 2001**

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

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Academic Year 2010/2011

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Dedication

Dedicated to my Family, Relatives, Friends and Colleagues. I love you all!!!

Acknowledgements

First and foremost my special thanks are due to God for his inspiration from the very inception up to my successful completion of this project and my academic career.

I would like to express my sincerest gratitude to my supervisor Dr. Martinez Gutierrez, Norman A, for his valuable, critical and scholarly comments and suggestions. Without his comments this drafting project wouldn't have been put in its present form.

I am highly indebted to IMO, Ministry of Transport and my sister Nigest Desalegn for making true my dream to study my LL.M by extending financial support.

I would also like to thank Professor David J Attard, Mr. Ruben Maceda, Ms. Belja, Mr. Hamza and other IMLI staffs for their advice support and encouragement in my study and this project.

I wish to give my thanks and love to my parents and relatives for their wholehearted belief, love and support which motivated me to carry out my study.

Last but not least, thanks are also due to my colleagues at IMLI and Ministry of Transport for their heartfelt moral support during my LL.M study.

LIST OF ABBREVIATIONS

Bunkers Convention	Convention on Civil Liability for Bunker Oil Pollution Damage, 2001
CLC 1969	Convention on Civil Liability for Oil Pollution Damage, 1969
CLC PROT 1992	Protocol of 1992 to amend the Convention on Civil Liability for Oil Pollution Dmage,1969
Federal Negarit Gazette	Official Federal Negarit Gazette Established under Negarit Gazette Proclamation No.4/1995
FUND 1971	Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971
HNS Convention	Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea,1996
IMCO	International Maritime Consultative Organization
IMO	International Maritime Organization
LLMC 1976	Convention on Limitation of Liability for Maritime Claims, 1976
LLMC PROT 1996	Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976
LMCLQ	Lloyd's Maritime and Commercial Law Quarterly
UNCLOS	United Nations Convention on the Law of the sea, 1982
UNEP	United Nations Environmental Programme
VCLT	Vienna Convention on the Law of Treaties,1969

INTRODUCTION

The Bunkers Convention was adopted in March 2001 at London and entered in to force on November 2008. Its aim is 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. It complements the existing civil liability regime like the CLC 1969 and the CLC PROT 1992, since these liability Conventions only deal with oil pollution from tanker vessels or ship which carry oil as a cargo. It does not cover the oil spills from non-tankers or dry cargo vessels which carry oil for their operation. This creates a lacuna in the regulation of oil pollution compensation from non-tanker vessels.

Hence, it is to fill such lacuna and bring completeness in the existing legal regime that the Bunkers Convention was adopted. Ethiopia to play its own role for the safe maritime transport to the international community ratified it on January 2008. However the effective implementation of such Convention brings to light some problems. The first problem is to some extent associated with Ethiopia being a monist and civil law legal regime oriented with single ratification proclamation which only shows that the Convention is ratified without having the substance of the Convention. As a result of this, there is difficulty of implementing such Convention. The other reason that brings practical difficulty for Bunkers Convention is the fact that it is not self-executing by itself. It has a general provision which left matters to be complemented by the domestic legislation in accordance with the Convention. So such matters have to be complemented by domestic legislation.

By having in mind such issues, the drafting project has the objective to solve such issues by providing the draft Proclamation as a model since such Proclamation has a significant advantage for full implementation of the Convention. Finally, it is recommended that Ethiopia should ratify LLMC 1976, as amended to solve the limitation of liability issue.

To do so the drafting project is broadly categorized in two major parts. To give a brief idea about civil liability for oil pollution and the Bunkers Convention to the readers, the first part deals with, the historical development of civil liability regime, the justifications for having the Bunkers Convention, its adoption and entry in to force. And in this part, the Ethiopia legislative process in incorporating the international Convention and the practical difficulties associated with single document ratification are discussed. Part two is wholly devoted to the main part of drafting project which is draft implementation Proclamation for Bunkers Convention.

Part one

Explanatory Note

1. Historical Development of the Civil Liability for Oil Pollution

Maritime transport is the longest aged transport beginning from the ancient use of transport by human beings. Hence transportation of goods and passengers by water is one of the ancient channels of commerce on record. This mode of transportation is still indispensable for international trade since ships are capable of carrying bulky goods which otherwise would not be carried and because it is the cheapest mode of transport. From those goods that have been transported, oil has been said to be the world's largest trade commodity and it accounts for almost half of the world sea borne trade.¹

Although maritime transport is indispensable and has various advantages, it has been a continuous threat for the marine environment. It is because of the fact that the pollution risk to seas, oceans or marine environment grows as a result of increasing sea borne transport of oil and hazardous substances.² The pollution risk may be from vessel source or from non-vessel source. The drafting project deals mainly with vessel source oil pollution which is one of the most common sources of pollution from vessel.

By recognizing the fact that such pollution poses a great risk to the marine environment measures have been undertaken at international level to cater for such problems. The measures have been based on two principles. The first one is the 'precautionary principle'.³ This principle is based on the idea that prevention mechanism has to be adopted with regard to the potential risk areas before the actual danger happens without waiting the scientific or concrete proof that it will happen.⁴ It is all about prevention act.

¹ Gauci, Gotthard; Oil Pollution at Sea: Civil Liability and Compensation for Damage, John Wiley & Sons Ltd, New York, 1997, p. 2.

² Ozcyayir, Z. Oya; Liability for Oil Pollution and Collisions, LLP Asia Ltd, Hong Kong, 1998, p. 159.

³ Ibid. p.163.

⁴ Ibid.

Complimentary to it, there is a ‘polluter pays principle,’⁵ which advocates putting an obligation on the polluter to pay all the expenses for cleaning up and treatment of the marine environment and to provide compensation for the victims. At first the rules that were designed for oil pollution were the preventive acts. But in the existence of such preventive acts, incidents have been occurring frequently. As a result of this, the preventive acts were later complemented by liability and compensation regimes which prevail widely nowadays.

However, the marine environmental law regime has a short history compared with international law.⁶ It has all developed under the auspices of international organizations and consultative organizations among others, IMO and the UNEP.⁷

In the history of adopting and implementing the marine environmental law, the maritime incidents have also played a vital role and have been immediate cause for certain laws to be adopted. Among other incidents the *Torrey Canyon* incident is the major one. The *Torrey Canyon*, a Liberian registered tanker went aground on the seven stones reef between the Scilly Isles and Land’s End on 18 March 1967 which caused extensive damage as a result of crude oil spill escaped from the ship.⁸ The devastating impact of the *Torrey Canyon* incident highlighted the immaturity of the exiting legal regime and the need for a new international regime in two major areas: the right of coastal States to protect themselves from oil pollution damage and the civil liability for oil pollution damage.⁹ Indeed it resulted in the promulgation of international Conventions and concluding of voluntary agreements.¹⁰ Immediately after such incident, both the French

⁵ Ibid.

⁶ Ibid. p. 162.

⁷ Ibid.

⁸ Zhu, Ling; *Compulsory Insurance and Compensation for Bunker Oil Pollution Damage*, Springer-Verlag Berlin Heidelberg, New York, 2007, p. 7.

⁹ Ozcyayir, Z.Oya; *op. cit.*, p. 211.

¹⁰ Voluntary agreements were respectively known as TOVALOP (Tanker Owners’ Voluntary Agreement concerning for Oil Pollution) and CRYSTAL (Contract regarding a supplement to Tanker Liability for

and the British governments raised the issue to the IMCO now IMO.¹¹ The IMCO by acknowledging the problem established its Legal Committee in 1967 and deals with the issue and convene a diplomatic conference on November 1969 which adopted the CLC 1969.¹²

In addition to CLC 1969, the FUND 1971 came into force in order to provide supplementary international regime, financed by the receivers of crude and heavy fuels oil carried by sea.¹³ However, after a certain time, it was felt that the above Conventions limit was insufficient to meet all reasonable claims and in May 1984 the Protocols to those Conventions was agreed upon even though they were not yet in force.¹⁴ Later on the original Conventions of CLC 1969 and the FUND 1971 were revised to facilitate ratification and since then the 1992 Protocols became dominant international Conventions at present day as they have acquired so many ratifications.¹⁵

However all these Conventions and others pollution regulations deal only with compensation with regard to pollution arise from vessels carrying oil as a cargo (tanker vessels). It doesn't cover the issue of pollution that would occur as a result of oil spill from non-tanker vessels or dry cargo vessels. This clearly shows a gap in the existing legal regime in addressing the compensation issue for oil spills from non-tanker vessels. This has been seen, for instance in the *Olympic Bravery* case where the vessel went aground off Ushant, France and the damage was caused by the bunker oil, but no damage

oil pollution). These agreements were established by the tanker owners and the oil industries in 1960s in response to the problems that are highlighted in the Torrey Canyon incident.

¹¹ Zhu, Ling; op. cit., p. 8.

¹² IMO Summary of Status of Conventions 31 October 2010.
< <http://www.imo.org/OurWork/Legal/Pages/LegalCommittee.aspx> > 17 November 2010. It came into force in 1975.

¹³ Zhu, Ling; op. cit., p. 8.

¹⁴ Ibid.

¹⁵ Ibid.

was covered as per the CLC 1969 since the vessel was not carrying any oil in bulk as a cargo.¹⁶

2. The Need for the Bunkers Convention

As it was mentioned above, there was no legal regime which addressed the issue of oil spill from bunkers. This highlighted the need of a new legal regime to deal with the issue. Generally the justifications that led to the Bunkers Convention were the following:

2.1. Limited Scope of the Earlier Conventions

The Civil Liability Conventions such as the CLC 1969 regulate liability and compensation for oil spills from the tanker ships. Even though CLC PROT 1992 enlarged the scope of application to unladen tankers, it is only intended to bunker spills from such a ship when it is sailing in ballast while operating in the oil trade but not when it is engaged in the carriage of other type of goods.¹⁷ Generally, both CLC 1969 and CLC PROT 1992 and the FUND 1971 and its 1992 Protocol didn't address the oil spill from dry cargo ships which carry bunker for their operation. This led to a legal lacuna which queried and justified for having a new legal regime.

2.2. The Need for Uniformity of Laws

Since the earlier civil liability Conventions didn't regulate the issue of compensation for oil spills from dry cargo carrier, some coastal States enacted legislation to address such issue. For instance the United Kingdom, to rectify the inequity between the liability imposed on tanker and non-tankers, has extended the civil liability Convention regime to bunker spill.¹⁸

¹⁶ Ozcyayir, Z.Oya; op. cit., p. 213.

¹⁷ Zhu, Ling; op. cit., p. 14.

¹⁸ Ibid. p. 15.

The United States also adopted the Oil Pollution Act of 1990 (OPA 90) which deals with oil pollution from all types of vessels where as other States do not have domestic legislations that deal with liability and compensation for oil spill from non-tankers.¹⁹ This variety of national legislation led to the application of multiple legal regimes which have a strong impact on the industry. Hence seeking of uniform application of rules at international level for civil liability and compensation for oil pollution from bunker oil spill from non-tankers vessels ignited the birth of the Bunkers Convention.

3. The Adoption and Entry into force of the Bunkers Convention

The Bunkers Convention was adopted in March 2001 in London. This Convention, as stated in its preamble, is intended to give effect to UNCLOS which requires States to cooperate in the further development of relevant international law which could ensure prompt and adequate compensation in respect of pollution damage caused by oil pollution of the marine environment and to take all necessary measures to prevent, reduce, and control pollution of marine environment pursuant to Articles 196 and 235 of UNCLOS. It was adopted in order to ensure the payment of adequate, prompt and effective compensation for damage caused by pollution resulting from the escape or discharge of bunker oil spill as it was forecasted by UNCLOS. It also modeled the CLC 1969 and CLC PROT 1992.²⁰ It complements the existing legal regime in civil liability for oil pollution and completes the regime for pollution related claims. As Griggs notes, the Bunkers Convention plugs a gap in pollution legislations so that all substances which may escape from a ship are now covered by liability and compensation regimes.²¹

¹⁹ Ibid.

²⁰ IMO website. <<http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-on-Civil-Liability-for-Bunker-Oil-Pollution-Damage-%28BUNKER%29.aspx> > 04 April 2011.

²¹ Martinez Gutierrez, Norman A.; *Limitation of Liability in International Conventions: The Relationship between Global Limitation Conventions and Particular Liability Regimes*, Routledge, London and New York, 2011, p. 158.

The Bunkers Convention entered into force in November 2008 and as of 31 October 2010 it has been ratified by 56 countries which account 85.51 percent of the world tonnage.²² This clearly shows that every country is taking care of such oil spill from bunker. Ethiopia, even though it is a land locked country and does not face a threat of pollution damage, acceded the Bunkers Convention on 27 January 2009 to take one of its own efforts for the safe marine environment as part of the international community and due to economic interest since it has its own ships which can be affected by the such regime.

4. General Overview of the Bunkers Convention

The Bunkers Convention layout is the same as that of most liability and compensation Conventions. It starts by defining the terms enshrined in the Convention.

4.1. Definitions

In the definition part, the Convention defines various terms that are used throughout the Convention. Among other things, the Convention defines the followings:

4.1.1 Ship

The Bunkers Convention defines the ship as any seagoing vessels and sea borne craft of any type whatsoever.²³ This definition is broad which seems to encompass all types of ship. However, the definition is limited to certain ships only since it is restricted by other articles of the provision. Article 4 of the exclusion provision clearly depicts such limitation. As per Article 4(1), the Bunkers Convention shall not apply to pollution damage as defined in CLC PROT 1992, mainly of oil spills from tankers. This Convention also do not apply to warship, naval auxiliary or other ship owned or operated

²² IMO Summary of statuts of Conventions. 31 October 2010.
< <http://www.imo.org/About/Conventions/StatusOfConventions/Pages/Default.aspx> >
November 18 2010.

²³Article 1(1).

by the State and used, for the time being, only on government non-commercial service pursuant to Article 4(2) of such Convention. Hence, Article 2(1) of general definition of the ships is limited to the extent of Article 4 of the exclusion provision.

But the reference to the definition of 'ship' in the definition of pollution damage creates a big difference between the CLC PROT 1992 and the Bunkers Convention since the definition of ship in the Bunkers Convention includes 'any sea going vessel and sea borne craft, of any type whatsoever', where as the CLC PROT 1992 is limited exclusively to tankers.²⁴ Therefore it can be argued that the Bunkers Convention may be applied to bunker oil pollution from combination ships, provided that this is not covered by the CLC PROT 1992.²⁵

4.1.2 Shipowner

The Bunkers Convention defines the shipowner as the owner, including the registered owner, bareboat charterer, manager and operator of the ship.²⁶ The registered owner is also separately defined as the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship in Article 1(4) of such Convention. 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.²⁷ This definition is similar to the definition of the 'owner' in Article 1(3) of the CLC 1969. However, it is much wider than the equivalent definition under CLC PROT 1992 and there is no requirement that the ship owner is actually using the ship at the time of the incident.²⁸

²⁴ Martinez Gutierrez, Norman A.; op. cit., p. 160.

²⁵ Ibid.

²⁶ Article 1(3).

²⁷ Article 1(4).

²⁸ Griggs, Patrick, International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001. 28 March 2006.
<http://www.aph.gov.au/house/committee/jsct/28march2006/treaties/bunkers_nia.pdf> 2 October 2010.

4.1.3 Bunker oil

The Bunkers Convention defines bunker oil as 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.²⁹

It is important to note that the criterion for determining whether the relevant oil falls under the Bunkers Convention is one of intention, the oil must be used or intended to be used for the operation or propulsion of the ship.³⁰ The presence of such oil in the consumption tanks or the pipelines would probably provide such evidence but where the oil is stored in other tanks this may not prove as easy to demonstrate.³¹ Generally, the Bunkers Convention will apply to oil carried as fuel used or intended to be used for operation or propulsion of a ship.

This Convention, unlike the CLC 1969 and CLC PROT 1992 did not use the word ‘persistent’ in defining oil. The use of broad term ‘any hydrocarbon mineral oil’ in the definition of bunker oil in the Bunkers Convention encompasses both ‘persistent’ and non-persistent hydrocarbon mineral oils, although the latter are rarely in the nature of any type of bunker fuel oil.³² Therefore it can be argued that the Bunkers Convention may be applied to bunker oil pollution from combination ships, provided that this is not covered by the CLC PROT 1992.³³ Therefore, although, the CLC PROT 1992 is also intended to cover bunker oil pollution damage from tankers, this will not be the case where the bunkers in question are not ‘persistent’ oil.³⁴

²⁹ Article 1(5).

³⁰ Martinez Gutierrez, Norman A.; *loc. cit.*

³¹ Tsimplis, Michael ;The Bunker Pollution Convention 2001: Completing and harmonizing the liability regime for oil pollution from ships? [2005], LMCLQ, p. 86.

³² Zhu, Ling ; *op. cit.*, p.22.

³³ Martinez Gutierrez, Norman A.; *loc. cit.*

³⁴ *Ibid.*

4.1.4 Pollution damage

The Bunkers Convention defines pollution damage as 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 the costs of preventive measures and further loss or damage caused by preventive measures.³⁵ As can be seen from the above discussion in the definition of ship and bunker oil, the Bunkers Convention will apply to the pollution damage that arises from non-tanker ships bunker oil spills. However, since the Bunkers Convention definition of ships encompasses all sea going vessels and the definition of bunker oil encompasses both persistent (which is the case in the CLC 1969 and CLC PROT 1992), it may apply to bunker oil pollution damages from combination ships where the bunkers in question is not persistent, provided that this is not covered by the CLC PROT 1992.

It is important to mention that damage caused by explosion and fire and any claim for damage to the environment which is unquantifiable is not covered by this Convention.³⁶ Nevertheless, if there is a bunker oil spill following an explosion and fire, the resulting pollution damage will be covered by the Convention.³⁷

Regarding preventive measures, it must be noted that the definition mentioned in Article 1(7) of the Bunkers Convention was taken verbatim from the CLC PROT 1992.³⁸ Thus the Bunkers Convention allows recovery of costs incurred in taking any reasonable

³⁵Article 1(9).

³⁶ Martinez Gutierrez, Norman A.; loc. cit.

³⁷ Ibid.

³⁸ Ibid.

measures after an accident has occurred to prevent or minimize pollution damage.³⁹ It is reasonable to say that, when claims for economic loss have a causal link with loss of, or damage to property, their recovery is clearly accepted. However, as with CLC PROT 1992, it remains unclear the extent to which claims for pure economic loss are allowable under the Bunkers Convention.⁴⁰ In this respect, it is suggested that, since the Bunkers Convention follows the CLC PROT 1992 definition of pollution damage the same approach should be followed when considering the pure economic loss claim.⁴¹ Therefore, it is suggested that claims in respect of which the necessary proximity between the bunker oil spill and the relevant loss is proved should be accepted as covered by the Convention, where as secondary or relational claims should not be allowed.⁴²

4.2. Scope of Application of the Bunkers Convention

The scope of application of the Bunkers Convention can be analyzed from a geographical stand point or depending on the type of damage caused by the bunker oil spill.⁴³

4.2.1 Territorial application

The Bunkers Convention applies to pollution damage caused in the territory, including the territorial sea, and in the exclusive economic zone of a State Party, established in accordance with international law.⁴⁴ Where no EEZ has been established by a State Party, the Bunkers Convention is applicable in an area beyond the territorial sea which is not more than 200 miles from the baselines and is determined by the State Party in

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid. p.162.

⁴² Ibid.

⁴³ Ibid. p.159.

⁴⁴Article 2.

accordance with international law.⁴⁵ And to preventive measures, it is applicable to wherever taken, to prevent or minimize such damage.⁴⁶ However, it is important to note that in the case of pollution damage, the actual location of where the incident occurs is irrelevant. The Convention applies even if the incident occurs on the high seas, provided that the pollution damage materializes in one of the geographical areas listed in Article 2 of such Convention.⁴⁷ Nevertheless, any pollution damage for spilled bunkers in the High Seas would not create any liability unless pollution damage within the scope of the Bunkers Convention is caused during the following six years pursuant to Article 8.⁴⁸

4.2.2 Types of loss covered

The Bunkers Convention, as per its Article 2, applies to bunker oil pollution damage and the measures for preventing or minimizing such pollution damage. As it has already been discussed above in the definition part of bunker oil, ships and pollution damage, the Bunkers Convention could apply to pollution damage that arises from bunkers oil spill from non-tanker ships. However, since CLC PROT 1992 applied only for persistent oil pollution from tanker ships and due to the fact that the Bunkers Convention applies to any sea going vessels and the definition of bunker oil encompasses both persistent and non-persistent oil, the Bunkers Convention may apply to pollution damage from combination ships where the bunkers in question are non persistent oil. However, the damage caused by explosion and fire and any claim for damage to the environment which is unquantifiable is not covered by this Convention.

With regard to preventive measures, recovery of costs incurred in taking any reasonable measures after an accident has occurred to prevent or minimize pollution damage are covered by Bunkers Convention. Furthermore, recovery for claims for economic losses

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Martinez Gutierrez, Norman A.; loc. cit.

⁴⁸ Tsimplis, Michael; op. cit., p. 87.

that have a causal link with loss of, or damage to property, is allowed by the Bunkers Convention. And claims in respect of which the necessary proximity between the bunker oil spill and the relevant loss is proved should be accepted as covered by the Convention, where as secondary or relational claims should not be allowed.⁴⁹

4.3 Liability under the Bunkers Convention

The Bunkers Convention, like CLC 1969 and CLC PROT 1992, imposes strict liability of the ship owner for bunker oil spill compensation pursuant to Article 3 of such Convention. There is no need of proof of fault to seek for claim. However, the owner can avoid liability if he proves that the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or 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.⁵⁰ In addition, if the ship owner 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 he can avoid the liability.⁵¹

Even though, the channeling of liability to one person can, in principle, be beneficial to all parties as one of them will be liable against third parties while contractual and insurance arrangements can be used in general to ensure that the party at fault will eventually pay, the Bunkers Convention adopts non-channeling mechanism whereby more than one person be jointly liable.⁵² It allows pollution victims to claim from the range of persons defined as ship owners who are the registered owner, bareboat charterer,

⁴⁹ See the discussion on the definition part of pollution damage.

⁵⁰Article 3(3).

⁵¹Article 3(4).

⁵² Tsimplis, Michael; op. cit., p. 88. See also Article 1(3) and 7(1).

manager and operator of the ship.⁵³ The previous method of channeling mechanism is a method that associates or directs liability to a named or specific person.⁵⁴ This mechanism is shifted away in the Bunkers Convention by giving variety of peoples that will be liable if a certain bunkers spill arise. It is to reassure that claimants will have adequate compensation, even if the registered owner is not able to pay for the pollution damage or has paid out of his own pocket since there is no fund which provides second tier compensation.⁵⁵

When an incident happens which involves two or more ships and pollution damage results there from, the ship owners will be jointly and severally liable for all such damage which is not reasonably separated as per Article 5 of such Convention unless exonerated, as per Article 3 of such Convention. It must be made clear that Article 5 only applies if both ships are covered by the Bunkers Convention.⁵⁶ Where the damage caused by one ship is covered by the Bunkers Convention while the damage caused by another ship is covered by another Convention (the most obvious example would be the CLC PROT 1992) then Article 5 does not apply and there is no joint and several liability even if the damage is inseparable.⁵⁷ In such a case the claimant could presumably claim against each ship separately demonstrating the extent of fault and trying to quantify the damage suffered.⁵⁸ The Bunkers Convention liability does not apply to government vessels when used for non-commercial purposes unless the Contracting State so prescribes but all commercial ships whether private or state-owned are subject to liability and jurisdiction as determined by the Convention.⁵⁹

⁵³Article 1(3).

⁵⁴ Zhu, Ling; *op. cit.*, p. 27.

⁵⁵ *Ibid.* p. 29.

⁵⁶ Tsimplis, Michael; *op. cit.*, p. 90.

⁵⁷ *Ibid.* pp. 90-91.

⁵⁸ *Ibid.* p. 91.

⁵⁹ *Ibid.* See also Article 4(2), (3) and (4).

4.4. Limitation of Liability

Normally the Bunkers Convention is the basis of liability. It establishes strict liability on the ship owners for the bunker oil spill. It is not a limitation of liability Convention. However the Convention allows the ship owners to limit their liability under any applicable national or international regime, such as the LLMC 1976 and LLMC PROT 1996. This provision left the door open as to the limit of liability by referring to the applicable national or international regime. So the ship owners have to look which law is going to be applied on them.

The provision also gives an insight for the States to enforce the applicable regime. So the State which didn't have the applicable legal regime on the limitation of liability should have to accede to the LLMC PROT 1996 or enact its own limitation of liability regime for proper implementation of the Bunkers Convention and to encourage their ship owner. Ethiopia is an example as it does not have such regime. So it has to accede to such Protocol to achieve those objectives mentioned above. But the travaux preparatoires of the Bunkers Convention evident that the intention of State Parties was that any claim subject to that convention would be subject to limitation under the LLMC (as amended by its protocol 1996).⁶⁰ However the final text of Article 6 appeared as it was not intended. Nevertheless, it must be recalled that Article 31(1) of the VCLT allows a treaty be interpreted 'in the light of its object and purpose' to work those regimes in harmony and this defect in the drafting may be cured by necessary implication of intention of the parties since Article 6 didn't reflect the actual intention of State Parties.⁶¹

4.5 Compulsory Insurance and Direct Action

The Bunkers Convention puts an obligation of compulsory insurance or financial security on registered owner of ship greater than 1000 gross tonnage as per Article 7(1) of such

⁶⁰ Martinez Gutierrez, Norman A.; *op. cit.*, p. 190.

⁶¹ *Ibid.* pp. 193-195.

Convention even though liability for bunker pollution may arise for several persons falling under the definition of ship owner.⁶² In addition the amount insured is limited upwards by the LLMC 1976 limits but a minimum amount is not prescribed and this is left to the “applicable national or international limitation regime” of the State Party.⁶³ The conditions of issue and the validity of the insurance certificate will be determined by the State in which the ship is registered and it also requires the issuance of such certificate attesting that insurance or financial security by the State Parties to be as per the model set out in the annex to the convention pursuant to Article 7(2) and (7) of the Convention.

The Bunkers Convention also requires the State Parties to authorize an institution or an organization recognized by it to issue the certificate attesting the compulsory insurance.⁶⁴ A State Party shall also notify the Secretary-General of the IMO to the specific responsibilities and conditions of the authority delegated to an institution or organization recognized by it, the withdrawal of such authority and the date from which such authority or withdrawal of such authority will come in to effect.⁶⁵ In any case, 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.⁶⁶

The Bunkers Convention requires the certificate to be in the official language or languages of the State Parties subject to omitting it as per the States wish.⁶⁷ But if the language used is not English, French or Spanish, the text shall include the translation into one of these languages.⁶⁸ The certificate issued has to be carried on board the ship and a

⁶² Gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex 1 of the International Convention on Tonnage Measurement of Ships, 1969. See also Article 1(3).

⁶³ Tsimplis, Michael; *op. cit.*, p. 94.

⁶⁴ Article 7 (3) (a).

⁶⁵ Article 7(3) (b).

⁶⁶ *Ibid.*

⁶⁷ Article 7(4).

⁶⁸ *Ibid.*

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.⁶⁹

However, ships owned by a State Party need not carry an insurance certificate but a certificate confirming the State ownership and stating that the liability is covered to the Bunkers Convention limits i.e. a certificate of self-insurance.⁷⁰ Presumably ships excluded from the operation of Bunkers Convention such as State Owned ships not used in commercial activities under Article 4 (2) and which have not been subject to the Convention by the choice of their Government as per Article 4(3) will not need to carry any such certificate.⁷¹

Nevertheless any State Party can exclude the application of the compulsory insurance provisions to ships working solely within its territorial sea pursuant Article 7(15) of the Bunkers Convention. The Bunkers Convention affirmed that all the certificates issued by a State Party will be recognized as valid by all other State Parties subject to the condition that where the financial credibility of the insurer or the guarantor is in question a State Party may request consultation with the issuing State Party.⁷²

Moreover the Bunkers Convention entitles the victims of the pollution to bring their claim for pollution damage directly against the insurer or other persons providing financial security for the registered owner's liability for pollution damage irrespective of whether the ship owner is solvent or not and also irrespective of whether the ship owner is in breach of his insurance contract and therefore he cannot recover under it.⁷³ In this case, the insurer is entitled to limit liability even if the ship owner is not entitled to do so.

⁶⁹ Article 7(5).

⁷⁰ Tsimplis, Michael; *op. cit.*, p. 95. See also the limits prescribed in Article 7(1) and (14).

⁷¹ *Ibid.*

⁷² *Ibid.* p.96. See also Article 7(9).

⁷³ Article 7 (10). See also Tsimplis, Michael; *op. cit.*, pp. 90-91.

The insurer can also invoke all the defenses the ship owner would have invoked in an action against the ship owner.⁷⁴ In addition the insurer may avoid liability if the pollution was a result of willful misconduct by the ship owner.⁷⁵ Nevertheless it is clear that defenses that could have been invoked under the insurance contract, for example misrepresentation, breach of the obligation of good faith etc., would not allow the insurer to avoid liability against third parties.⁷⁶ In such cases the insurer (or provider of guarantee) will have a claim under the insurance contract against the ship owner which may be worthless where the ship owner has gone into liquidation.⁷⁷ The insurer is explicitly given the right to join the ship owner in the proceedings.⁷⁸

4.6 Period of Limitation

As per Article 8 of the Bunkers Convention the right to claim compensation will be extinguished unless an action is brought 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.

4.7 Jurisdiction, recognition and enforcement of judgments

As per the Bunkers Convention, Courts of State Parties can assume jurisdiction for pollution damage occurred in their territory including territorial sea and exclusive economic zone of a State Party which is established or measured as per Article 2 of the

⁷⁴ Ibid

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.

Convention and to preventive measures wherever taken.⁷⁹ The Convention requires State Parties to ensure that reasonable notice to be given for the action against the defendant and that their courts are able to assume jurisdiction actions for compensation under the Convention.⁸⁰ And the Bunkers Convention obliges State Parties to recognize and enforce any judgment taken by State Party's courts as soon as the formalities required in that State complied with.⁸¹ However the Bunkers Convention allows State Parties to refuse that judgment taken by other party's courts and subject it to ordinary form of review where the judgment was obtained by fraud or when the defendant was not given reasonable notice and a fair opportunity to present his or her case.⁸²

5. Adopted Resolutions

The conference on Bunkers Convention adopted three Resolutions. The resolution on limitation of liability is one of those resolutions.⁸³ This resolution urges all States that have not yet done so to ratify or accede to the LLMC PROT 1996. The Protocol raises the limit and compensation payable in the event of accident compared to the LLMC 1976.⁸⁴ This resolution is deemed to serve as a solution and deals with the possibility of having uniform limitation rules governing the liability of bunker oil pollution⁸⁵ since the Bunkers Convention didn't establish a specific legal regime for limitation of liability by the owners of the ship.

⁷⁹ Article 9.

⁸⁰ Ibid.

⁸¹ Article 10.

⁸² Ibid.

⁸³ Zhu Ling; *op. cit.*, p.45.

⁸⁴ Ibid.

⁸⁵ Ibid.

The second resolution is on the promotion of the technical cooperation.⁸⁶ The third resolution is for the purpose of protecting persons taking measures to prevent or minimize the effects of oil pollution.⁸⁷ This resolution asks States, when implementing the Convention, to consider the need to introduce legal provisions to protect persons taking reasonable measures to prevent or minimize the effects of bunker oil pollution.⁸⁸ It recommends that persons taking reasonable measures to preventive or minimize the effects of oil pollution be exempt from liability unless the liability in question resulted from the personal act or omissions, committed with the intent to cause damage, or with recklessness and with knowledge that such damage would probably result.⁸⁹

In addition, the third resolution recommends that all States to consider the relevant provision of HNS Convention as a model for their legislation.⁹⁰ Due to the fact that the Bunkers Convention has removed the similar provisions of ‘channeling liability’, pollution victims can thus claim for compensation for bunker-oil pollution damage against any person taking preventive measures.⁹¹ This will discourage the undertaking of preventive measures, since should pollution damage occur, the person taking preventive measures might be held liable under ordinary tort law to pollution victims or to the ship owner or even to both.⁹²

⁸⁶ Ibid.

⁸⁷ Ibid. p. 46

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Ibid.

6. The Ethiopian Perspective

Ethiopia is a land-locked country located in the horn of Africa. With regard to its legal system, Ethiopia is a civil law system characterized by monist legal system. Before 1993, Ethiopia was the coastal State. And Ethiopia was one of the traditional maritime nations in Africa. It is the de jure independence of Eritrea in 1993 that left Ethiopia without coast. However, Ethiopia is keeping still in this industry with great interest and active involvement since it has its own ships sailing across the world. Currently, Ethiopia is using port of Djibouti and Sudan via bilateral arrangements. For proper follow-up of maritime sector and effective implementation of international maritime laws to ensure safe maritime transport, Ethiopia established the Maritime Authority as per the proclamation 549/2007, which is accountable to Ministry of Transport.

6. 1 The Legislative Process in incorporating International Conventions in Ethiopia

As per the 1995 Constitution of Ethiopia, the executive organ has the power to conclude an international agreement within the scope of its responsibility. However, that signed agreement to become part and parcel of the law of land, as per Article 9(4) of such constitution; it has to be ratified by the House of Peoples Representatives (the legislative body) by majority vote pursuant to Article 55 of the above Constitution. Moreover, such ratified Convention to be regarded as law it has to be also published by the Federal Negarit Gazette. Once, the Convention is ratified and the ratification proclamation is published in the Federal Negarit Gazette it becomes part of the primary legislation. Like other primary legislation, the ratification proclamation, supersede other laws in the areas the Convention covered. Based on the power given in the primary legislations by House of Peoples Representatives the executive organ which is the Council of Ministers will enact regulation for proper implementation of the primary regulation pursuant to Article 77(13) of the above Convention.

However, this ratification proclamation is done with single paper which states only that Convention has been ratified.⁹³ This has brought the practical problem in application of international Convention. So for effective implementation of the Bunkers Convention Ethiopia should have to undergo the followings:

6.2 Enactment of a Proclamation to implement the Bunkers Convention

As stated above in Ethiopia as a monist legal system country, the ratification of Convention is done by the single document which only talks about the fact that the certain convention is ratified. In the same way the Bunkers Convention⁹⁴ was ratified on January 2009 by Proclamation no. 620/2009. This brings the practical problem in the implementation of the Convention. This is because of the fact that the ratification proclamation does not attach the text of the Convention. This creates difficulty for the judiciary as well as the executive organ for proper implementation of the Convention since it is not available in the Federal Negarit Gazette.

The single document of ratification without having the substantial part of the Convention is not also in lined with the objective set for publicizing laws under Federal Negarit Gazette Proclamation No.4/1995. This Proclamation requires publicizing of laws for serving public notice. It is to give access the public to the law to mitigate the principle of the rule of the law that ignorance of the law has no excuse. In addition to that rationale of the law to be published in the said gazette is to give notice and clarity of the law for the judiciary and the executive organ for effective implementation and interpretation of the law including ratified Conventions.

The other reason for the need of a Proclamation to implement the Bunkers Convention is the fact that the Convention is not self-executing by itself. It has a general provision which leaves matters to be complemented by the domestic legislation in accordance with the Convention. So this has to be given consideration. The UNCLOS also in its Article

⁹³ See the ratification proclamation in the annex one.

⁹⁴ It is attached as annex two.

217 conveys and imposes the same obligation on flag States with regard to adopting laws and regulation for effective implementation of the Conventions. So having such a proclamation has a significant advantage to the public at large, to the executive and judiciary organ and for discharging the international obligation which is expected from Ethiopia under the Bunkers Convention.

Hence, the author believes that it is reasonable to recommend that even though Ethiopia is a monist and civil law origin, to rectify such above problems and to play its own role for the safe maritime transport to the international community, it should enact such proclamation as modeled hereunder. The main reason for issuing such Proclamation rather than regulation is because of the legal restrictions. As per Article 77(3) of the 1995 Constitution of Ethiopia which defines the powers of the Council of Ministers, the Council of Ministers has the power to enact regulation only when it is vested to it by House of Peoples Representatives. In Bunkers Ratification Proclamation no. 620/2009 such power is not vested.

To this effect the Proclamation as much as possible should incorporate the provisions of the Convention using the same wording to achieve uniform interpretation and application of the Convention. However, there are provisions of the Bunkers Convention which are left to State Parties to be elaborated under their national legislation. Thus, the Proclamation should specify clearly the definition of ships as only Ethiopian Ships are regulated by it. In addition to that the application of the Proclamation should be based on nationality of ships which are registered on Ethiopia. It doesn't apply based on geographical application as per the Bunkers Convention since Ethiopia is a land-locked country. Moreover, the Proclamation shall authorize the authority which shall issue the certificate attesting that insurance or financial security for ships having a gross tonnage greater than 1000 have maintained by the ship owner. In present situation the authority which shall be authorized to such issuance has to be the Maritime Authority of Ethiopia as it has given all responsibilities with regard to maritime affairs as per its establishment Proclamation no.547/2007. In addition to this, in order to conform to the third resolution adopted and to encourage that persons taking reasonable measures to preventive or

minimize the effects of oil pollution the Proclamation shall incorporate provisions which would exempt those persons from liability unless the liability in question resulted from the personal act or omissions, committed with the intent to cause damage, or with recklessness and with knowledge that such damage would probably result.

6.3 Ratification of LLMC 1976, as amended

The Bunkers Convention established the bases of liability of the ship owner. It imposes strict liability of the ship owner. As it has discussed above, it left the limitation of the liability of the ship owner to the State Parties to the Convention. In Ethiopia there is no national legal regime which deals with such issue. In addition to that Ethiopia is not a party to any Convention on limitation of liability. This subjects Ethiopian shipowner to unlimited liability which leads to the unfavorable financial situations. As per the author belief, it is not recommend Ethiopia to have its own limitation of liability for the sake of uniform and comprehensive application of the limitation of liability and to conform to the resolution that was done during adoption of the Bunker Convention which requires the States to ratify the LLMC PROT 1996. Hence for effective application of the Bunkers Convention and for encouraging its shipowners and attract other shipowners in the future by having a comprehensive regime on limitation of liability Ethiopia should ratify and be Party to the LLMC PROT 1996. Ratification of such Protocol will provide a legal regime which will ensure the legal security and a fair system of limitation of liability to Ethiopian Ship owners not only for pollution damage but also to other claims in case they were held liable.

Part Two

Proclamation No. -----/2011

A PROCLAMATION TO IMPLEMENT THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE, 2001

WHEREAS, Article 194 of the United Nations Convention on the Law of the Sea, 1982 requires States to take all necessary measures to prevent, reduce, and control pollution of the marine environment;

WHEREAS, the International Convention on Civil Liability for Bunker Oil Pollution Damage was adopted by the International Maritime Organization in 2001 and ratified by the House of Peoples' Representatives of the Federal Democratic Republic of Ethiopia at its session held on the 1st day of January, 2009;

WHEREAS, it is necessary to enact specific legislation for the effective implementation of such Convention and ensuring the payment of adequate, prompt and effective compensation for damage caused by pollution resulting from the escape or discharge of bunker oil spill;

NOW, THEREFORE, in accordance with Article 55 (1) and (12) of the Constitution of the Federal Democratic Republic of Ethiopia it is hereby proclaimed as follows:

PART ONE

GENERAL

1. Short Title

This Proclamation may be cited as “The Civil Liability for Bunker Oil Pollution Damage Proclamation No. -----/2011.

2. **Definitions**

- 1/ “Code” means the 1960 Maritime Code of Ethiopia;
- 2/ “Proclamation 547/2007” means the Proclamation on the establishment of the Maritime Authority;
- 3/ “Ship” means any seagoing vessel and seaborne craft, of any type whatsoever registered in Ethiopia or recognized as such as per the Code and Proclamation 547/2007 including the Ethiopian Government ships which are operated for commercial purposes;
- 4/ “Person” means any individual or partnership or any public or private body, whether corporate or not;
- 5/ “Shipowner” means the owner, including the registered owner, bareboat charterer, manager and operator of the ship;
- 6/ “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 Ethiopia Government and operated by a company which is registered in Ethiopia as the ship’s operator, “registered owner” shall mean such company;
- 7/ “Bunkers Convention” means the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 ;
- 8/ “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;
- 9/ “Civil Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage 1992, as amended;
- 10/ “Preventive measures” means any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage;
- 11/ “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;

12/ “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;

13/ “Authority” means, the Maritime Authority of Ethiopia

14/ “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;

15/ “Organization” means the International Maritime Organization;

16/ “Secretary-General” means the Secretary-General of the Organization;

3. Scope of Application

- 1/ This Proclamation shall be applicable to pollution damage caused by Ethiopian ships wherever they may be and to the preventive measures taken to prevent or minimize such damage.
- 2/ This Proclamation shall not be applicable to;
 - a) pollution damage as defined in the Civil Liability Convention, whether or not compensation is payable in respect of it under that Convention;
 - b) warships, naval auxiliary or other ships owned by Ethiopian Government and used only for non commercial services;
- 3/ Notwithstanding the provisions of the sub article 2(b) of this Article, this Proclamation may be applicable to Ethiopian warships or others ships described in sub article 2(b) of this Article, if Ethiopian Government decides to apply this Proclamation, in which case it shall notify the Secretary-General thereof specifying the terms and conditions of such application.

PART TWO
LIABILITY AND LIMITATION OF LIABILITY OF THE SHIPOWNER

4. Liability of the Shipowner

- 1/ Except as provided in sub articles 3 and 4 of this Article, 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 sub article (1) of this Article, 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;
 - d) 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;

- 4/ No claim for compensation or damage under this proclamation may be made against ;
- a) any person performing salvage operation with the consent of the shipowner or the instruction of competent public authority;
 - b) any person taking reasonable measures to prevent or minimize the efforts of bunker oil pollution;
 - c) the pilot or any other person who, without being a member of the crew, perform services of the ship;
 - d) the servants or agents of the shipowner or the members of the crew;
 - e) the servants or agents of persons mentioned in (a) and (b): unless the liability in question resulted from their personal act or omission, committed with the intent to cause damage, or recklessly and with the knowledge that such damage would probably result.
- 5/ No claim for compensation for pollution damage shall be made against the shipowner otherwise than in accordance with this Proclamation;
- 6/ Nothing in this Proclamation shall prejudice any right of recourse of the shipowner in accordance with relevant law.

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 4, shall be jointly and severally liable for all such damage which is not reasonably separable.

6. Limitation of Liability

The Shipowner and the person or persons providing insurance or other financial security shall be entitled to limit their liability in accordance with any law that may be adopted giving effect to the Convention on Limitation of Liability for Maritime Claims, 1976 or any amendment or Protocol thereto to which Ethiopia is a Party.

PART THREE

INSURANCE OR FINANCIAL SECURITY

7. Compulsory insurance or financial security

The registered owner of a ship having a gross tonnage greater than 1000 shall maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover for pollution damage. The amount of such security or guarantee will be provided by any law that may be adopted giving effect to the Convention on Limitation of Liability for Maritime Claims, 1976 or any amendment or Protocol thereto to which Ethiopia is a Party;

- 1/ The Authority shall issue the certificate attesting that insurance or financial security for ships having a gross tonnage greater than 1000 have maintained by the owner after determining that the requirements of this sub article (1) of this Article has complied with and withdraw these certificates if the conditions under which they have been issued are not maintained. This certificate shall be in the form of the model set out in the annex to this Proclamation 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;
- 2/ The certificate issued by the Authority as per sub article (2) of this Article shall be in Amharic with an English translation;
- 3/ The certificate shall be carried on board the ship and a copy shall be deposited with the Authority or, if the ship is not registered, with the authorities issuing or certifying the certificate;
- 4/ 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 sub article 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 sub article 4 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;
- 5/ The Authority shall, subject to the provisions of this article, determine the conditions of issue and validity of the certificate.

- 6/ Nothing in this Proclamation shall be construed as preventing the Authority from relying on information obtained from other States or the organization or other international organizations relating to the financial standing of providers of insurance or financial security for the purposes of this Proclamation. In such cases, the Authority relying on such information is not relieved of its responsibility as authority issuing the certificate required by sub article 2 of this Article;
- 7/ Certificates issued or certified under the authority of a State Party to the Bunkers Convention shall be accepted by the Authority for the purposes of this proclamation and shall be regarded 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. However, the Authority 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 Proclamation;
- 8/ 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 sub article (1) of this Article. 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;
- 9/ No ship is allowed to operate at anytime under Ethiopian Flag unless a certificate has been issued under sub article 2 or 10 of this Article;
- 10/ If insurance or other financial security is not maintained in respect of a ship owned by a Ethiopian Government, the provisions of this Article relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the Authority stating that the ship is owned by the Ethiopian Government and that the ship's liability is covered within the limit prescribed in accordance with sub article 1 of this Article. Such a certificate shall follow as closely as possible the model prescribed by sub article (2) of this Article;

PART FOUR

PERIOD OF LIMITATION, JURISDICTION, RECOGNITION AND ENFORCEMENT

8. Period of Limitation

- 1/ Rights to compensation under this Proclamation 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;
- 2/ Where the incident consists of a series of occurrences, the six years' period shall run from the date of the first such occurrence.

9. Jurisdiction

- 1/ The Courts shall entertain actions for compensation against the shipowner, insurer or other person providing security for the shipowner's liability for pollution damage and preventive measures as per Article 3 of this Proclamation;
- 2/ In assuming jurisdiction as per sub article (1) of this Article, the courts shall give notice of action to the defendant.

10. Recognition and Enforcement

- 1/ Any judgment given in the courts of State Parties to the Bunkers Convention, which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognized in courts, except:
 - (a) where the judgment was obtained by fraud; or
 - (b) where the defendant was not given reasonable notice and a fair opportunity to present his or her case;
- 2/ A judgment recognized under sub article (1) of this Article shall be enforceable as soon as the formalities required in the 1965 Civil Procedure Code of Ethiopia have been complied with. The formalities shall not permit the merits of the case to be re-opened.

PART FIVE

MISCELLANEOUS PROVISIONS

11. Duty to Report

The Authority shall report the implementation of this Proclamation to the Ministry of Transport annually.

12. Interpretation

This proclamation shall be interpreted in the light of the object and purpose of the Bunkers Convention.

13. Fine and penalty

Any person who contravenes this Proclamation shall be fined and penalized as per the Code and 2005 Criminal Code of Ethiopia respectively.

14. Power to Enact Regulations

The Council of Ministers may enact regulations necessary to give effect to this Proclamation.

15. Inapplicable Laws

Any law, regulation, directive and customary practice contrary to this Proclamation shall have no effect.

16. Effective Date

This Proclamation shall enter into force up on the date of publication in the Federal Negarit Gazeta.

Done at Addis Ababa, this day of, 2011.

**GIRMA WOLDEGIORGIS
PRESIDENT OF THE FEDERAL
DEMOCRATIC REPUBLIC OF ETHIOPIA**

Annex to the Proclamation
CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY
IN RESPECT OF CIVIL LIABILITY FOR BUNKER OIL POLLUTION
DAMAGE

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

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

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

Type of Security.....

Duration of Security.....

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

Name.....

Address.....
.....

This certificate is valid until.....

The present certificate is issued or certified by the Maritime Authority of
Government of Ethiopia.

At..... On.....
(Place) (Date)

.....
(Signature and Title of issuing or certifying official)