



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

**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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DEDICATION

**God bless us when our hearts are full of love
To him, who was God's messenger.**

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PART I

***LAW ON THE ACCESSION OF THE REPUBLIC
OF ALBANIA TO THE INTERNATIONAL
CONVENTION “ON CIVIL LIABILITY FOR
BUNKER OIL POLLUTION DAMAGE, 2001”***

Explanatory Note

Law No. xxx, Date xx.xx.2008 on the Accession of the Republic of Albania in the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunker Convention)

I. INTRODUCTION

The final text of Bunker Convention together with three accompanying resolutions was adopted at a Diplomatic Conference held at the International Maritime Organization (IMO) headquarters in London from 19 to 23 March 2001.

With the adoption of this Convention, the last significant gap in the international regime for compensating victims of oil spills from ships is set to be closed.

The Bunker Convention establishes the liability and compensation regime for pollution damage caused by any bunker oil onboard or originating from the ship.

A. BACKGROUND

The Bunker Convention was adopted by the IMO to ensure that adequate, prompt and effective compensation is available to persons who suffer damage caused by bunker oil pollution from ships other than oil tankers. These include, *inter alia*, container and passenger ships and bulk carriers;

given that some of these ships usually carry larger quantities of bunker oil than oil carried as cargo in small oil tankers.

During the negotiations leading up to the Civil Liability Convention of 1969 (CLC) it was recognized that there was a gap in the pollution liability and compensation regime. The CLC applied to tankers only and covered pollution from persistent oil carried as cargo and from persistent oil carried in the form of bunkers but only if the tanker was laden at the time of the incident. The main reason for this was that it was always contemplated that the Fund Convention (producing compensation from the oil industry) would complement the CLC (which produced compensation from ship-owners).¹

However, bunkers on non-tankers continued to fall outside the compensation regime.

The fact that bunkers on non – tankers were not covered by any compensation regime made the need for a liability regime to deal with pollution damage from bunker oil spills to become more apparent. As reported by the United Kingdom P&I Club, global accident figures in the 1990's showed that half of pollution damage claims involved vessels that were not carrying oil as cargo. Moreover, many countries were in agreement that an international convention should include provisions on compulsory insurance to ensure that the shipowner has the necessary cover in the event of a bunker spill.² Consequently, in 1996, a draft of Bunker Convention was

¹ www.bmla.org.uk/documents/imo-bunker-convention.doc. The web page was visited in November 2007.

² <http://www.tc.gc.ca/pol/en/Report/tp14370/1-1.htm>. The web page was visited in February 2008.

introduced in the work of the IMO's Legal Committee to address the gap in the international pollution and liability regime regarding bunker spills from non-tankers. In March 2001, the final text of the Bunker Convention together with three resolutions was adopted by the IMO.

Commenting on the successful outcome of the Conference, the then IMO Secretary-General Mr. William A. O'Neil said that, "The adoption of a bunkers convention completes the task initiated by the Legal Committee when it was established by IMO more than 30 years ago- namely, the adoption of a comprehensive set of unified international rules governing the award of prompt and effective compensation to all victims of ship-sourced pollution."³

This Convention therefore has to be seen as plugging a gap by addressing, for the first time, the problem of pollution caused by the escape of bunkers from general cargo ships.

The Bunker Convention, which provides a free-standing instrument covering pollution damage only, is modeled on the International Convention on Civil Liability for Oil Pollution Damage, 1969 as amended by the 1992 Protocol (CLC).

B. OVERVIEW OF THE BUNKER CONVENTION

This convention provides for an adequate, prompt and effective compensation available to persons who suffer damage caused by bunker oil

³ IMO News, Issue 2, 2001, p.7

pollution from ships other than oil tankers. Hereunder follows an overview of the main articles of the Bunker Convention.

Article 1

Definitions

This article deals with the definition of terms which are used for the purpose of the Bunker Convention such as ship, person, shipowner, registered owner, bunker oil, incident, pollution damage, State of the ship's registry etc.

It should be noted that in the CLC "owner" is defined as the "person or persons registered as the owner of the ship" thus channelling all responsibility under the CLC to that person⁴. On the face of it, it is therefore surprising to find that "shipowner" in the Bunker Convention embraces "the owner, including the registered owner, bareboat charterer, manager and operator of the ship" - a much more extensive group of persons. It follows that wherever else in the Convention a liability is imposed on the "shipowner" (see in particular Article 3) all those listed in the definition of shipowner are embraced.⁵

Article 2

Scope of Application

The Convention applies to pollution damage caused in the territory and territorial sea of a State party, or in its Exclusive Economic Zone (or

⁴ CLC Article 1 (3)

⁵ www.bmla.org.uk/documents/imo-bunker-convention.doc. The web page was visited in November 2007.

equivalent if there is no EEZ but not exceeding 200 nautical miles). The Bunker Convention also applies to preventative measures taken to prevent or minimize damage in those areas.

Article 3

Liability of Shipowner

The shipowner is strictly liable, up to the limits of liability established in article 6, for pollution damage unless such damage was caused by the act or omission of a third party, the negligence or wrongful act of any authority responsible for maintaining aids to navigation, or it resulted from an act of war. These limited exceptions from liability match the exceptions contained in the CLC. Furthermore, the shipowner may also be excused from liability where it is shown that the person who suffered the damage caused or contributed to it.

Where more than one person is liable under the Bunker Convention, each person shall be held jointly and severally liable. Following the format of CLC the Bunker Convention provides that claims can only be brought against the shipowner under the convention and not otherwise. However, the right of the shipowner to recover from third parties is expressly preserved.

The International Group of P&I Clubs, in a submission to the Diplomatic Conference, suggested that instead of leaving all those persons embraced by the wide definition of shipowner exposed to claims it would make sense to “channel” all claims initially to the registered owner. If, and only if, the shipowner failed to satisfy the claim would the bareboat charterer, manager

or operate be exposed to claims. Again, time constraints prevented exploration of this practical proposal and it was withdrawn.⁶

Article 4

Exclusions

The Convention does not apply to pollution damage as defined in the CLC, whether or not compensation is payable in respect of it under the CLC, to warships or government ships being operated in non-commercial service, unless decided otherwise by a State party. Government ships used for commercial service however, fall within the scope of application of the Convention.

Article 6

Limits of Liability

During initial discussions in the Legal Committee a number of States were keen to see a separate free standing fund provided by shipowners to be exclusively available to satisfy bunker pollution claims. There was strong opposition to this proposal in particularly from the shipowning and insurance sectors and it was finally agreed that bunker pollution claims would be subject to existing national laws on the limitation of liability for maritime claims, and international conventions such as the Convention on Limitation of Liability for Maritime Claims, 1976 as amended by the 1996 Protocol (LLMC).

⁶ www.bmla.org.uk/documents/imo-bunker-convention.doc. The web page was visited in November 2007.

Thus, bunker pollution damage claimants will have to prove their claims against any available limitation fund alongside other property claims arising out of the same incident.

It should be noted that the Convention is accompanied by a Resolution⁷ which urges all States to ratify or accede to the 1996 Protocol to the LLMC 1976 thus increasing the fund available for all claims – including bunker pollution claims.⁸

Article 7

Compulsory Insurance or Financial Security

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, to cover the liability for pollution damage in an amount equal to the limits of liability as stipulated in article 6 and not exceeding an amount calculated in accordance with the LLMC.

It should be noted that the obligation to obtain insurance rests upon the registered owner to the exclusion of the other persons who come within the definition of shipowner in article 3 (1) of the Bunker Convention.

In case of claims for compensation for pollution damage, a direct action may be brought against the insurer. If the insurer is sued, his right to limit his liability in accordance with article 6 is assured even where the registered owner, whose liability he insures, has forfeited the right to limit by his

⁷ Annex 1 – Conference Resolution on Limitation of Liability

⁸ www.bmla.org.uk/documents/imo-bunker-convention.doc. The web page was visited in November 2007.

conduct. The insurer may avoid liability if he can establish that the damage resulted from the willful misconduct of the shipowner. No other policy defenses, which might in normal circumstances be available to the insurer, may be invoked in such a direct action.⁹

Ships of the State party operating exclusively in domestic voyages are allowed to opt out of the requirement of compulsory insurance. This provision raised debates as to whether domestic voyages should be defined as voyages starting and finishing within a State's territory or territorial seas or whether it should be extended to include voyages beginning and ending in the much wider area constituted by a State's EEZ. A number of States with complex island or archipelagic waters (such as the Philippines and Indonesia) were keen to see the exclusion extended to the EEZ on the basis that many inter-island voyages go outside the 12 mile limit of the territorial sea. On the other hand a number of Mediterranean countries (Cyprus, Malta and Italy) were keen to restrict the exclusion to territorial seas on the basis that the EEZ of adjacent Mediterranean States overlap and vessels belonging to neighboring States and operating within their EEZ could represent a serious pollution threat.

The conference ended up, as in other provisions, adopting a compromise proposal to the effect that exclusion would apply only to the territorial sea.¹⁰

This article also sets out in a detailed manner the administrative matters governing the certificates of insurance or other financial security as required.

⁹ *Ibidem*

¹⁰ *Ibidem*.

The certificate must be modeled according to the form attached to the Annex of the Bunker Convention.

Article 8

Time Limits

Claims are extinguished if an action is not brought within three years from the date when the damage occurred but in no circumstances shall an action be brought more than 6 years from the date of the incident which caused the damage.

Article 9

Jurisdiction

The question of jurisdiction was the subject of extended debate throughout the passage of this instrument through the Legal Committee. It was clearly the desire of delegates to the Diplomatic Conference to give claimants as many options as possible when it comes to the pursuit of claims compensation. In the event no great choice is available, claimants may pursue claims before the courts of the State or States in which the pollution has occurred or where measures to prevent or minimize pollution have taken place. Where security for claims has been posted by the shipowner, insurer, or other person providing security, action may be brought where that security has been provided.¹¹

¹¹ *Ibidem.*

Resolutions of the Conference

The Conference, which adopted the Convention, also adopted three additional resolutions:

i. Resolution on limitation of liability.

The resolution urges all States that have not yet done so, to ratify, or accede to the Protocol of 1996 to amend the LLMC, 1976. The 1996 LLMC Protocol raises the limits of liability and therefore amounts of compensation payable in the event of an incident, compared to the 1976 Convention.

ii. Resolution on promotion of technical co-operation.

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

- a. the assessment of the implications of ratifying, accepting, approving, or acceding to and complying with the Bunker Convention;
- b. the development of national legislation to give effect to the Bunker Convention;
- c. the introduction of other measures for, and the training of personnel charged with, the effective implementation and enforcement of the Bunker Convention;

iii. Resolution on protection for persons taking measures to prevent or minimize the effects of oil pollution.

The resolution urges States, when implementing the Bunker Convention, to consider the need to introduce legal provision for protection for persons taking measures to prevent or minimize the effects of bunker oil pollution. It recommends that persons taking reasonable measures to prevent or minimize the effects of oil pollution be exempt from liability unless the liability in question resulted from their personal act or omission, committed with the intent to cause damage, or recklessly and with knowledge that such damage would probably result. It also recommends that States consider the relevant provisions of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as a model for their legislation.

As mentioned above, the Bunker Convention is modeled on the CLC; however, the former does not provide for channeling of liability to the shipowner. Therefore, the adoption of this resolution was necessary to protect persons performing salvage operations or any other person taking preventive measures, from exposure to liability under the Bunker Convention.

C. ALBANIAN SITUATION

Albania is situated in a very favourable geographical position, in the South-East part of the Balkans, in which the 1/3rd of the border line is sea, with a coastline of about 440 km. Albania's geographical location and its resources

qualifies it as a minefield for the maritime sector. However, the country has not taken full advantage to protect, develop and exploit such areas.

The maritime transport and its related matters play a major role in the economic activities of the country. Therefore, Albania is in the process of developing several projects to enhance its maritime sector as follows:

- Development of ports.
- Encouragement of competitive maritime transport.
- Focus on port safety and navigational safety.
- Environmental protection.
- Adoption of national maritime legislation.
- Implementation of the provisions of international maritime conventions.

Having the above in place Albania will be a competent, competitive and attractive destination for ships engaged in international trade within the region. Furthermore, it will enhance its profile and it will stand as one of the contenders of international trade among its maritime neighbors.

Albania has adopted several international maritime conventions and enacted respective national legislation which is in compliance with the former.

Those international maritime conventions include the following:

- The United Nations Convention on Law of the Sea, 1982, (UNCLOS).

- The International Convention on Safety of Life at Sea, 1974, (SOLAS).
- The International Convention on Load Lines, 1966.
- The International Convention on Standards of Training, Certification and Watchkeeping (STCW), 1995.
- Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREG).
- International Convention for the Prevention of Pollution From Ships, 1973 as modified by the Protocol of 1978 (MARPOL 73/78).
- International Convention on Tonnage Measurement of Ships, 1969.
- The International Convention on Limitation of Liabilities on Maritime Claims, 1976, (LLMC) as amended by the Protocol of 1996.
- The International Convention on the Civil Liability for Oil Pollution Damage, 1969, (CLC).

Most of the above conventions have been translated into the domestic legislation and are as follows:

- The Albanian Maritime Code (AMC) adopted by Law No. 9251, date 08.07.2004, provides the competences, tasks, responsibilities and structure of the maritime sector, as well as the relations between political bodies and governmental agencies.
- The Law on Port Authority No. 9130, date 08.09.2003 provides for the specific organization and management of ports in Albania.

- Law on Safety on the Ship and in Port No. 9281, date 23.09.2006, provides the legal basis for the controlling and implementing the requirements laid down by ISPS Code for Ships/Ferries engaged in international maritime transport.

The ports in Albania play a crucial role in contributing to the economy of the country. Approximately 75 per cent of the import and export commodities are transported by sea and the handling capacity of the ports is 5 million TEUs per annum. The ports in Albania have a capacity to accommodate passenger ferries, Ro-Ro vessels, container ships, general cargo ships, bulk cargoes and fuel.

The development of the infrastructure and superstructure of the ports is strongly supported by the national maritime policy. The improvement of port facilities will increase their handling capacity and will enhance the profile of the ports to be an attractive destination for a large number of ships engaged in international trade. This development will certainly have a very positive impact in the economy of the country.

During the 1990s, Albania experienced economic, political and social transition. With regard to economic matters, it transformed from centralized economy to the free market economy. This process affected many sectors of the economy including the Albanian Merchant Fleet. Consequently, the merchant shipping is decentralized and now the merchant fleets are owned mainly by private players.

The fact that the ships are now privately owned, however, has not improved their technical and management conditions. The Albanian owners continue to purchase second hand tonnage ships with a high level of depreciation, generally substandard.

It has been envisaged that most of the foreign ships entering the Albanian ports or offshore terminals are of the same **substandard conditions**.

It is apparent from the facts above that the Albanian waters and marine environment are exposed to serious marine and environmental dangers. However, it has been fortunate that, irrespective of its situation, there has been no reported marine incidents in the Albanian territorial sea or its EEZ. The fact that such incidents have not occurred does not mean that Albania is immune from eventualities.

The important role of the maritime sector in the economy of the country and the need for the development of the shipping industry cannot be overemphasized. However, the engagements of the country in the national and international arena require an effective balance between the development of the shipping industry on one hand and the safety of navigation and protection of marine environment on the other. The balance between these two interests has been seen to incline more in favour of the shipping industry in order to protect and promote the national shipping interests. The Albanian Government and the public however, have become aware of the important role of the navigational safety and security and especially the environmental protection in the sustainable development of the Albanian economy. The Albanian maritime policy starts to focus on

fostering a qualitative, competitive and environmental-friendly shipping industry.

Albania has adhered to all major conventions on safety of navigation at sea and marine environmental protection adopted by IMO and committed itself to the fulfillment of the duties and obligations under these conventions.

As aforesaid, fortunately, incidents have not occurred in the Albanian waters. Nevertheless, for the reasons already mentioned the marine environment in particular is exposed to risks and hazards.

In the event of an oil spill from an oil tanker, there is domestic legislation to face such challenges as Albania has acceded to the CLC and Fund Conventions and they are incorporated into Albanian domestic law, namely Law no. 9212, date 25.03.2004, and Law no. 9213, date 25.03.2004. However, there is no specific national legislation governing the liability and compensation for bunker oil pollution from non-tankers. In the view of the Albanian situation where the ships calling at the Albanian ports are mainly non-tankers and of poor technical standards, it is a necessity to adopt the Bunker Convention and to develop a domestic law on the liability and compensation for bunker oil pollution. Therefore, the adoption of this Convention constitutes a milestone in the protection of environmental hazards from all types of ships including tankers which are perceived as a serious threat to the marine environment. Incorporation of this Convention to the domestic law of Albania would be a positive step to deal constructively with this problem.

In Albania, the protection of the marine environment is the responsibility of the Ministry of Transport and Telecommunication. However, such powers have been delegated to the Albanian Maritime Administration. The main goal of the Albanian Maritime Administration is to ensure safety of life and property at sea, prevent pollution of the maritime environment by ships, and promote the shipping industry.

Most of the ships calling the ports of Albania are of 1000 gross tonnage and above. In this respect, to comply with the provisions of the Bunker Convention, in particular Article 7, the registered owner of the ship is obliged to have a compulsory insurance or other financial security such as the guarantee of a bank or similar institution to cover liability for bunker pollution damage. A certificate attesting that this insurance or financial security is in force for a ship is issued or certified by the competent authority of a State party to the Bunker Convention. The Bunker Convention also provides that a claim can be brought directly against the insurer.

Therefore, the Bunker Convention affirms a legal mechanism for the payment of adequate, prompt and effective compensation to victims of pollution caused by the escape or discharge of bunker oil from ships.

In 2004, the Republic of Albania adopted the law No. 9212, Date 25.03.2004 to accede to the LLMC Convention. Therefore, the LLMC Convention is incorporated in the national legislation of Albania. Article 6 of the Bunker Convention provides for the right of the shipowner and the person providing insurance or other financial security to limit their liability under any applicable national or international regime, such as the LLMC. In this

respect, having the relevant national regime on limitation of liability ensures that the rights enjoyed by such persons as provided by this Article are preserved.

The adoption of the Bunker Convention has no financial implications on the State budget. It will benefit the Country, especially the protection of marine environment and bridge the gap in the national regime for compensation and liability in case of oil spills from ships.

II. THE PROCEDURES FOLLOWED IN ALBANIA TO RATIFY AND ACCEDE TO AND IMPLEMENT INTERNATIONAL CONVENTIONS

According to article 121 (1) of the Albanian Constitution the ratification or accession to international convention becomes effective and binding with the approval of the Albanian Parliament.

Paragraph (1) and (2) of Article 122 respectively state that any international convention that has been ratified or acceded to constitutes part of the internal juridical system after it is published in the Official Journal of the Republic of Albania. It is implemented directly, except for cases when it is not self-executing and its implementation requires the adoption of a law or bylaw. An international convention that has been ratified or acceded to by Albania has precedence over the domestic laws that are in conflict with such Convention.

Albania is a civil law country following the monist approach regarding the incorporation of the international conventions into its domestic legislation. Thus, the national legal procedures do not provide for enactment of the provisions of the convention into domestic law. Consequently, the provisions of the convention itself are applicable and enforceable as law. The text of the Convention is translated to Albanian language and is attached to the law approved by the Albanian Parliament.

The Ministry responsible for the respective matters that the international convention regulates undertakes the ratification or accession to an international convention. With regard to the ratification or accession of the International Maritime Organization Conventions (IMO conventions), the responsible Ministry is the Ministry of Public Works, Transport and Telecommunication (the Ministry).

When the IMO convention complies with the objectives of the national maritime policy then, the Department of Maritime Transport, within the Ministry, will commence the necessary internal consultation process which includes drafting of the respective law.

The draft law together with an explanatory note, which summarizes the provisions and the scope of application of the convention, and motivations as to why the country has to ratify or accede to such convention is circulated to other relevant Ministries for their opinion and comments.

After receiving the opinion and the comments from other Ministries, the relevant inputs will be incorporated to the explanatory note and forwarded to

the Council of Ministers for approval. When the draft law is approved by the Council of Ministers, it will be introduced, together with the explanatory note, in the Albanian Parliament.

Once the draft law is introduced to the Albanian Parliament, it will be circulated to the Technical Commissions of the Parliament for their opinion and comments. If the Technical Commissions find that the draft law complies with the national maritime policy and with the relevant legal procedures, the draft law will be introduced for approval of the General Assembly of the Albanian Parliament.

After the draft law has been approved by the General Assembly, it becomes law and it will be applicable and enforceable 15 days after its publication in the Official Gazette.

The primary provisions of the Convention, however, would be incorporated as a separate Chapter in the Albanian Maritime Code. The same Chapter may provide for additional matters, such as those regulated by resolutions of the Convention.

Should the convention require the implementation of certain provisions to be regulated by adequate national legislation (law or bylaw) then the Ministry, as the responsible Authority for the implementation of the convention, will undertake necessary initiatives for the drafting of the law or bylaw.

The adoption, incorporation and implementation of the Bunker Convention will follow the same procedures as the one explained above.

The Albanian Parliament will adopt the Law to accede to the Bunker Convention. This Law will serve as the instrument which will incorporate the Bunker Convention to the national legislation and will come into force 15 days after its publication in the Official Gazette.

The next step to follow is the incorporation of the primary provisions of the Bunker Convention as a separate Chapter within the Albanian Maritime Code. This new Chapter will fall within Part 6 of the Albanian Maritime Code which deals with civil liability matters.

To enable such incorporation the Albanian Parliament will adopt a Law which amends the Albanian Maritime Code. This Law will translate the relevant provisions of the Bunker Convention and will introduce additional provisions which emanates from the resolutions of the convention. The Law will be accompanied by an explanatory note.

The Law amending the Albanian Maritime Code and its explanatory note are attached as Part II of this paper.

After the adoption of the Law amending the Albanian Maritime Code the Ministry will draft the necessary Decree to regulate the implementation of the provisions regarding the compulsory insurance. The Decree will provide matters including:

1. the competent authority to issue and certify the certificate of the compulsory insurance;
2. the conditions to issue and certify the certificate of compulsory insurance;

3. measures to be taken by port State control officers when ships do not comply with the provisions of article 307 of the Albanian Maritime Code etc.

The decree will be circulated to other relevant Ministries for their opinion and comments.

After receiving the opinion and the comments from other Ministries, the relevant input will be incorporated to the Decree and forwarded to the Council of Ministers for approval.

The Decree will be approved by the Council of Ministers and will enter into force immediately after its publication in the Official Gazette.

The Decree on bunker's certificate regarding compulsory insurance or other financial security and its explanatory note are attached as Part III of this paper.

Lastly, the law adopted by the Albanian Parliament for the accession to the International Convention on Limitation of Liability for Maritime Claims, 1976 and its 1996 Protocol which illustrates the above mentioned procedures and is attached herewith as **Appendix 1**.

DRAFT

LAW

No. xxxx, DATE xx.xx.2008

**ON THE ACCESSION OF THE REPUBLIC OF ALBANIA TO THE
INTERNATIONAL CONVENTION “ON CIVIL LIABILITY FOR
BUNKER OIL POLLUTION DAMAGE, 2001”**

In accordance with article 78, 83 (1) and 121 (1) of the Constitution,
based on the proposal of the Council of Ministers,

THE PARLIAMENT
OF
THE REPUBLIC OF ALBANIA

DECIDED:

Article 1

The Republic of Albania accedes to the International Convention on
Civil Liability for Bunker Oil Pollution Damage, 2001.

Article 2

The present law enters into force 15 days after its publication in the Official Gazette.

Published under the Decree No. xxx, date xx.xx.2008 of the President of Republic, Bamir Topi.

The Convention is translated to the Albanian Language and is attached to the above law.

PART II

LAW ON AMENDMENTS OF THE ALBANIAN MARITIME CODE

EXPLANATORY NOTE
ON
LAW NO. xxx, DATE xx.xx.2008
ON
AMENDMENTS TO THE ALBANIAN MARITIME CODE

The Albanian Maritime Policy for the years 2007-2008 is focused in the development of the infrastructure and superstructure of the national Ports. This objective would be achieved through the increased interests of foreign companies to invest in the Albanian ports along with the investments of the Albanian Government.

However, it cannot be overemphasized that the development of the shipping industry has to be balanced with the safety of navigation and protection of the environment. Paying due regard to this principle the Albanian Maritime Policy remains concentrated on fostering a qualitative, competitive and environmental-friendly shipping industry.

The adoption by the country of international convention, especially regarding marine pollution, endeavors to establish the legal frame to face any challenge that may occur in the future. In this respect it must be noted that positive steps are made since Albania has acceded to almost all the international conventions dealing with marine pollution and in particular to the international conventions which regulate the civil liability of the shipowner in case of pollution damage to the marine environment. The last international convention adopted by the Albanian Parliament is the

International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunker Convention), bridging the last gap in the national regime for compensation and liability in case of oil spills from ships.

The adoption of the Bunker Convention constitutes a milestone in the protection of environmental hazards from all types of ships, and not only tankers, which are perceived to cause a serious threat to the environment. Through the adoption of this Convention a constructive action has now be taken to deal with this problem.

As a civil law country, Albania follows the monist approach regarding the incorporation of the international conventions into its domestic legislation. Thus, the national legal procedures do not provide for enactment of the provisions of the convention into domestic law. Consequently, the provisions of the convention itself are applicable and enforceable as law. The text of the convention is translated to Albanian language and is attached to the law approved by the Albanian Parliament.

However, the main provisions of every maritime convention acceded to by Albania are incorporated into the Albanian Maritime Code as a separate chapter. The purpose of such incorporation into the Albanian Maritime Code is to domesticate the provisions of the convention and to achieve uniformity and consistency in relation to their (Convention and Maritime Code) application.

Furthermore, the same Chapter will introduce additional provisions which emanates from the resolutions of the convention.

In the case of Bunker Convention, additional provisions are those emanating from the resolution on protection of persons taking measures to prevent or minimize the effects of oil pollution.

This resolution urges States, when implementing the Bunker Convention, to consider the need to introduce legal provision for protection of persons taking measures to prevent or minimize the effects of bunker oil pollution. It recommends that persons taking reasonable measures to prevent or minimize the effects of oil pollution be exempt from liability unless the liability in question resulted from their personal act or omission, committed with the intent to cause damage, or recklessly and with knowledge, that such damage would probably result.

The Bunker Convention is modeled on the International Convention on the Civil Liability for Oil Pollution Damage, 1969 (CLC). However, regarding the person liable in case of pollution the former does not provide for channeling of liability solely to the shipowner. Indeed, the wide definition of shipowner embraces not only the registered owner, as in the case of CLC, but charterers, operators, managers who are exposed to claims in case of pollution. Therefore, for those persons performing salvage operations or for any other person taking preventive measures, it is necessary to provide in the national legislation protection from exposure to liability under the Bunker Convention. Such provision is made under article 304 (6) "Liability of the shipowner" of the new inserted Chapter X of the Albanian Maritime Code.

This law attempts to achieve two objectives, namely:

1. The incorporation of the primary provisions of the Bunker Convention into the Albanian Maritime Code as a separate Chapter; and
2. The introduction of the provisions emanating from the resolution on protection of persons taking measures to prevent or minimize the effects of oil pollution.

With the adoption of this law, Albania will have the proper legal mechanism for the payment of adequate, prompt and effective compensation to victims of pollution caused by the escape or discharge of bunker oil from ships.

DRAFT

LAW

No. xxxx, DATE xx.xx.2008

ON AMENDMENTS OF THE ALBANIAN MARITIME CODE

In accordance with article 78 and 83 of the Constitution, based on the proposal of the Council of Ministers,

THE PARLIAMENT
OF
THE REPUBLIC OF ALBANIA

D E C I D E D:

Article 1

Part 6 of the Albanian Maritime Code is amended by insertion of Chapter X, “Civil Liability for Bunker Oil Pollution Damage”, after Chapter IX, “Limitation of Liability for Maritime Claims”:

CHAPTER X

Article 302

Scope of application

This Chapter shall apply exclusively—

(a) to pollution damage caused:

(i) In the internal waters and the territorial sea of Albania, and

(ii) In the area beyond and adjacent to the territorial sea of Albania as it is determined in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of Albanian territorial sea is measured;

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

(c) to pollution damage caused by any ship registered in Albania wherever it may be.

Article 303

Exclusions

1. This Chapter shall not apply to pollution damage as defined in the Law no. 9212, date 25.03.2004, on the accession to the Civil Liability Convention, 1969, whether or not compensation is payable in respect of such damage under that law.

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

3. With respect to ships owned by the Government of Albania and used for commercial purposes, Albania shall be subject to suit in the respective

jurisdiction and shall waive all defences based on its status as a sovereign State.

Article 304

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 Albanian Ports 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 Chapter.

6. Subject to paragraph 7, no claim for compensation for damage under this Chapter may be made against:

(a) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;

(b) any person taking reasonable measures to prevent or minimize the effects of bunker oil pollution; and

(c) 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 knowledge that such damage would probably result.

7. Nothing in this Chapter shall prejudice any existing right of recourse of the owner against any third party, including the persons indicated in paragraph 6.

8. Nothing in this Chapter shall prejudice any right of recourse of the shipowner which exists independently of this Chapter.

Article 305

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

Article 306

Limitation of liability

Nothing in this Chapter shall affect the right of the shipowner and the person or persons providing insurance or other financial security to limit their liability in accordance with the Law no. 9212, date 25.03.2004 on the accession of the Republic of Albania to the International Convention on Limitation of Liability for Maritime Claims as amended.

Article 307

Compulsory insurance or financial security

1. The registered owner of any ship having a gross tonnage of 1000 and above entering or leaving a port in Albanian territory, or arriving at or leaving an offshore facility in its territorial sea 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 Law no. 9212, date 25.03.2004 on the accession of the Republic of Albania to the International Convention on Limitation of Liability for Maritime Claims as amended.

2. The registered owner of a ship registered in Albania having a gross tonnage of 1000 and above and wherever it is 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 Law

no. 9212, date 25.03.2004 on the accession of the Republic of Albania to the International Convention on Limitation of Liability for Maritime Claims as amended.

3. (a) A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Chapter shall be issued to each ship registered in Albania after the Albanian Ship Register S.A. has determined that the requirements of paragraph 2 have been complied with.

(b) With respect to a ship not registered in a State Party to the International Convention on Civil Liability for Bunker Oil Pollution, 2001, a certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Chapter may be issued or certified by the Albanian Ship Register S.A.

4. The certificate shall be in the Albanian language. The text of the certificate shall include a translation into English language.

5. The certificate shall be carried on board the ship and the Albanian Ship Register S.A. shall maintain a copy for a period of five years after the certificate expires.

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 of this article, before three months have elapsed from the date on which notice of its termination is given to the Albanian Ship Register S.A., unless the certificate has been surrendered to the Albanian Ship Register

S.A. or a new certificate has been issued within the said period. The foregoing provision shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this article.

7. For ships registered in Albania, the Albanian Ship Register S.A. shall, subject to the provisions of this article, determine the conditions of issue and validity of the certificate.

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 306. Furthermore, even if the shipowner is not entitled to limitation of liability according to article 306, 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 willful misconduct of the shipowner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the shipowner against the defendant. The defendant shall in any event have the right to require the shipowner to be joined in the proceedings.

9. Albania 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 3 or 11.

10. Notwithstanding the provisions of paragraph 5, Albania may notify the Secretary-General that, for the purposes of paragraph 10, 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 which issues the certificate required by paragraph 2 has notified the Secretary-General that it maintains records in an electronic format, accessible to Albania, attesting the existence of the certificate and enabling Albania to discharge its obligations under paragraph 7.

11. If insurance or other financial security is not maintained in respect of a ship owned by the Government of Albania, the provisions of this article relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the Albanian Ship Register S.A. stating that the ship is owned by the Government of Albania 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 of certificate prescribed in the International Convention on Civil Liability for Bunker Oil Pollution, 2001.

Article 308

Time limits

Rights to compensation under this Chapter 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-year' period shall run from the date of the first such occurrence.

Article 309

Jurisdiction

Where an incident has caused pollution damage in the territory, including the territorial sea, or in an area referred to in article 302 (a) (ii), or preventive measures have been taken to prevent or minimize pollution damage in such territory, including 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 Commercial Court of Albania.

Article 2

The subsequent numbering of the Articles of the Albanian Maritime Code will be amended accordingly.

Article 3

The present law enters into force 15 days after its publication in the Official Gazette.

Published under the Decree No. xxx, date xx.xx.2008 of the President of Republic, Bamir Topi.

PART III

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

EXPLENATORY NOTE
ON
DECREE NO. xxx, DATE xx.xx.2008
ON
BUNKER'S CERTIFICATE REGARDING COMPULSORY
INSURANCE OR OTHER FINANCIAL SECURITY

One of the objectives of the Albanian Maritime Policy for the years 2007-2008 is the development of the infrastructure and superstructure of the national Ports. The increased interests of foreign companies to invest in the Albanian ports along with the investments of the State make possible the realization of this objective.

However, it cannot be overemphasized that the development of the shipping industry has to be balanced with the safety of navigation and protection of the environment. Paying due regard to this principle the Albanian Maritime Policy remains focused on fostering a qualitative, competitive and environmental-friendly shipping industry.

The adoption by the country of international convention, especially regarding marine pollution, aims to establish the legal frame to face any challenge that may occur in the future.

In this respect it must be noted that Albania has acceded to almost all the international conventions dealing with marine pollution and in particular to the international conventions which regulate the civil liability of the shipowner in case of pollution damage to the marine environment. In this

direction the last international convention adopted by the Albanian Parliament is the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (hereinafter referred to as Bunker Convention).

The adoption of this Convention constitutes a milestone in the protection of environmental hazards from all types of ships, and not only tankers which are perceived to cause a serious threat to the environment. Through this convention a constructive action has now be taken to deal with this problem. The adopted Law no. xxxx, date xx.xx.2008 on amendments of the Albanian Maritime Code incorporated and translated the primary provisions of the Bunker Convention into national legislation.

The Albanian ports are called in a more frequent basis by ships of 1000 gross tonnage and above. In this respect to comply with the provisions of the Convention and amended Albanian Maritime Code, in particular article 7 and 307 respectively, the registered owner of the ship is obliged to have a compulsory insurance or other financial security such as the guarantee of a bank or similar institution to cover liability for pollution damage. A certificate attesting that this insurance or financial security is in force for (hereinafter referred to as “insurance certificate”) a ship is issued or certified by the competent Authority of a State party to the convention.

Article 7 of the Bunker Convention and article 307 of the Albanian Maritime Code also provide that a claim can be brought directly against the insurer.

Therefore, the Bunker Convention and its incorporation into the Albanian Maritime Code affirms a legal mechanism for the payment of adequate,

prompt and effective compensation to victims of pollution caused by the escape or discharge of bunker oil from ships.

The convention regulates in a detailed manner the requirements and the form of the insurance certificate. However, it leaves to the State to determine when the required conditions, under which such certificate of insurance is issued or certified, are fulfilled. It is also up to the State to nominate the competent Authority to issue or certify such certificate of insurance and to settle on the administrative procedures that the shipowner has to comply with.

The adoption of this decree aims to establish the necessary legal framework for the fully and effective implementation of the Bunker Convention. This decree provides *inter alia*; which ships are required to maintain an insurance certificate, which are the administrative procedures to comply with, which are the rights and obligations of the competent Authority, which are the duties of the port State control officer etc.

The adoption of this decree has no negative financial implications on the State budget. It only looks for the fulfilment of the international obligations undertaken by Albania acceding to the Bunker Convention.

DECREE

No. xxx, date xx.xx.2008

ON

**BUNKER'S CERTIFICATE REGARDING COMPULSORY
INSURANCE OR OTHER FINANCIAL SECURITY**

In accordance with article 100 of the Constitution and article 307 of the Law no. xxxx, date xx.xx.2008 on amendments of the Albanian Maritime Code based on the proposal of the Minister of Public Works, Transport and Telecommunication, the Council of Ministers,

D E C I D E D:

1. For the purpose of this decree:
 - a. "Authority" means the Albanian Ship Register S.A.
 - b. "Convention" means the International Convention "On Civil Liability for Bunker Oil Pollution Damage, 2001"
 - c. "Contracting State" means a State party to the International Convention "On Civil Liability for Bunker Oil Pollution Damage, 2001"
 - d. "Insurance certificate" means the certificate attesting insurance or other financial security, such as the guarantee of a bank or similar financial institution which covers the liability of the registered owner for pollution damage;
 - e. "Minister" means the Minister of Public Works, Transport and Telecommunication;
 - f. "Officer" means the person employed by the Harbor Mater and

performs Port State Control duties.

2. Ships of a tonnage of 1000 GT and above shall maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, which covers the liability of the registered owner for pollution damage as, defined in the Convention.
3. The Authority is empowered by the Minister to issue or certify to the ships registered in Albania or in a State that is not a Contracting State the Certificate attesting that insurance certificate is in force in accordance with the provisions of the Convention.
4. The registered owner of a ship that is registered in Albania or in a State that is not a Contracting State may apply to the Authority for the issue or certification of an insurance certificate for the ship.
5. In relation to each application, the Authority must:
 - a. if it is satisfied that the owner of the ship is maintaining insurance or other financial security for the ship in an amount that will cover the limits of liability prescribed by paragraph 1 of Article 7 of the Convention in relation to the ship, issue or certify to the applicant an insurance certificate for the ship; or
 - b. if it is not so satisfied, refuse to issue or certify an insurance certificate for the ship.
6. The Certificate shall be in the form of the model set out in Annex 1 of this Decree.
7. An insurance certificate comes into force the day stated in the certificate and remains in force until the expiration of the day stated in the certificate.
8. In case that:

- a. a ship for which an insurance certificate has been issued or certified is not at a port in Albania at the time when the certificate expires; and
- b. the Authority is satisfied that, after the day stated in the certificate as the day until which it is to remain in force, there will be in force a contract of insurance or other financial security for the ship in an amount that will cover the limits of liability prescribed by article 7 of the Convention in relation to the ship,

the Authority may extend the certificate. An extension of an insurance certificate expires upon the ship's arrival at a port in Albania.

8. If, while an issued or certified insurance certificate for a ship registered in Albania or in a State that is not a Contracting State is in force, the ship ceases to be registered in Albania or in that State, as the case may be, the certificate so issued or certified thereupon ceases to be in force.
9. 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, before three months have elapsed from the date on which notice of its termination is given to the Authority, unless the certificate has been surrendered to the Authority or a new certificate has been issued within the said period.
10. When an issued or certified insurance certificate is cancelled or ceases to be in force the registered owner must without delay cause the certificate to be lodged with the Authority.
11. The Authority shall withdraw the insurance certificate issued to a ship

- registered in Albania or in a State that is not a Contracting State if the conditions under which they have been issued are not maintained.
12. The Authority shall inform the Ministry of Public Works, Transport and Telecommunication in regards of the Certificates issued or certified to or withdrawn from the ships registered in the Albania or in a State that is not a Contracting State.
 13. The officer during the inspection on the ship may require the master or other person in charge of a ship, to produce a relevant insurance certificate that is in force for the ship before leaving the Albanian ports.
 14. If the Officer has reasonable grounds to believe that the master or other person in charge of a ship is attempting to take the ship out of a port in Albania at a time when the ship does not have on board a relevant insurance certificate that is in force for the ship, the Officer may detain the ship until such a certificate is obtained or produced to the Authority, as the case requires.
 15. The present Decree enters into force after its publication in the Official Gazette.

SALI BERISHA
PRIME MINISTER

ANNEX

CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY

IN RESPECT OF LIABILITY FOR THE 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	Gross tonnage	Distinctive number or letters	IMO Ship Identification Number	Port 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 liability for Bunker oil pollution damage, 2001.

Type of Security

Duration of Security

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

Name.....

Address.....

This certificate is valid
until.....

Issued or certified by the Government
of.....

(Full designation of the State)

OR

The following text should be used when a State Party avails itself of article
7, paragraph 3:

The present certificate is issued under the authority of the Government
of.....

(full designation of the State) by (name of
institution or organization)

At On

(Place)

(Date)

.....

(Signature and Title of issuing or certifying official)

PART IV

APPENDIX

APPENDIX 1

LAW

No. 9212, DATE 25.03.2004

ON

**THE ACCESSION OF THE REPUBLIC OF ALBANIA TO THE
INTERNATIONAL CONVENTION “ON LIMITATION OF
LIABILITY FOR MARITIME CLAIMS, 1976” AND ON ITS 1996
PROTOCOL**

In accordance with article 78, 83 (1) and 121 (1) of the Constitution,
based on the proposal of the Council of Ministers,

THE PARLIAMENT

OF

THE REPUBLIC OF ALBANIA

D E C I D E D:

Article 1

The Republic of Albania adheres to the International Convention on
Limitation of Liability for Maritime Claims, 1976.

Article 2

The Republic of Albania adheres to the 1996 Protocol of the International Convention on Limitation of Liability for Maritime Claims, 1976.

Article 3

The present law enters into force 15 days after its publication into the Official Gazette.

Published under the Decree No. 4206, date 14.04.2004 of the President of Republic, Alfred Moisiu.

The Convention and its 1996 Protocol are translated to the Albanian Language and are attached to the above law.