



**IMO**  
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# **A DECREE TO INCORPORATE THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE, 2001 INTO THE LAWS OF BRAZIL**

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## TABLE OF CONTENTS

<b>CHAPTER 1 – EXPLANATORY NOTES</b>	<b>2</b>
<b>1.1. Introduction</b>	<b>3</b>
<b>1.2. Background</b>	<b>4</b>
<b>1.3. The Bunkers Convention</b>	<b>6</b>
<b>1.3.1. Overview of the Bunkers Convention</b>	<b>6</b>
1.3.1.1. Definitions	6
1.3.1.2. Scope of Application and Exclusions	8
1.3.1.3. Liability of the Shipowner	9
1.3.1.4. Limitation of Liability	10
1.3.1.5. Compulsory Insurance or Financial Security	11
1.3.1.6. Time Limits	12
1.3.1.7. Jurisdiction, Recognition and Enforcement	12
<b>1.4. The implementation of the Bunkers Convention into the Brazilian Law</b>	<b>12</b>
<b>1.4.1. Why is it important?</b>	<b>13</b>
<b>1.4.2 How to implement it?</b>	<b>13</b>
1.4.2.1. Limitation of Liability	14
1.4.2.2. Compulsory Insurance of Financial Security Certificate	15
1.4.2.3. Jurisdiction	15
1.4.2.4. Responder Immunity	16
<b>CHAPTER 2 – LEGISLATION DRAFT</b>	<b>17</b>
<b>2.1. Executive Decree Promulgating the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001</b>	<b>18</b>
<b>2.2. Legislative Decree Implementing the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001</b>	<b>29</b>

## CHAPTER 1 – EXPLANATORY NOTES

## 1.1. Introduction

The International Maritime Organization (IMO),<sup>1</sup> established in 1948, has played a key role in the regulation of maritime activities, putting into practice its purposes “to provide machinery for cooperation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade; to encourage and facilitate the general adoption of the highest practicable standards in matters concerning maritime safety, efficiency of navigation and prevention and control of marine pollution from ships”.<sup>2</sup>

Aiming to achieve safe, secure and efficient shipping on clean oceans, IMO provides regulations in relation to maritime safety and security, ship/port interface, prevention of marine pollution, liability and compensation regimes, among other subjects.

In relation to liability and compensation for pollution damage, under the auspices of the IMO there are the International Convention on Civil Liability for Oil Pollution Damage (CLC) as amended,<sup>3</sup> the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Convention) as amended,<sup>4</sup> the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention) as amended,<sup>5</sup> and the International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunkers Convention).<sup>6</sup>

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<sup>1</sup> The original name was Inter-Governmental Maritime Consultative Organization, or IMCO, but the name was changed in 1982 to IMO.

<sup>2</sup> IMO History, accessed at [www.imo.org](http://www.imo.org) on 29 January 2014.

<sup>3</sup> International Convention on Civil Liability for Oil Pollution Damage, entry into force 19 June 1975. Replaced by the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage of 29 November 1969, entry into force 30 May 1996.

<sup>4</sup> International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, entry into force 16 October 1978. Superseded by the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971.

<sup>5</sup> International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, not in force. Superseded by the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1974, not in force.

<sup>6</sup> International Convention on Civil Liability for Bunker Oil Pollution Damage, entry into force 21 November 2008.

Among the Conventions mentioned above, Brazil, as a member State of the IMO since 1963, has ratified only the CLC its original version of 1969, not having ratified its protocols of 1976 and 1992. As such, in relation to liability and compensation regimes for pollution damage, there is a gap to be filled under the Brazilian legislation, due to the fact that its legislation provides regulation regarding damage resulting from maritime casualties involving oil-carrying ships, only.

To fill up this gap, Brazil must provide regulations concerning liability and compensation regimes for pollution damage that are not covered by the CLC, and one of the ways to achieve this goal is by ratifying or acceding to the other IMO Conventions mentioned above and actually implementing them into municipal law.

The Bunkers Convention, which is the subject of the present draft, completed the international system of IMO Conventions in relation to liability and compensation for pollution damage. Indeed, this Convention is of utmost importance considering that nearly half of the total number of pollution claims result from bunker spills.<sup>7</sup>

Hence, considering the importance of a regulation on this matter, and bearing in mind that the circulation of ships in Brazil increased considerably in the recent years, and, due to the fact that, been a developing country, this number tends to rise, the country needs a legislation to ensure that adequate, prompt, and effective compensation is available for victims of damages caused by spills of bunker oil.

## 1.2. Background

Early in the 19<sup>th</sup> century the first oil tanker was built and, by the time of the Second World War, oil tankers industry increased rapidly.

In 1967, the world faced one of the biggest oil pollution incidents which occurred in the English Channel. An oil tanker, named *Torrey Canyon*, ran aground and spilled 120,000 tons of crude oil that was been carried by the vessel, resulting an immense damage to the marine environment.<sup>8</sup>

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<sup>7</sup> Martinez Gutierrez, Norman A.; *Limitation of Liability in International Maritime Convention: The Relationship between Global Limitation Conventions and Particular Liability Regimes*, Routledge, London/New York, 2011, p. 158.

<sup>8</sup> Torrey Canyon Disaster at [www.imo.org](http://www.imo.org) accessed on 08 January 2014.

This incident stimulated public opinion and brought the attention to, not only the necessity of environmental protection, but most important, the necessity of an efficient system to provide liability and compensation regime for accidents of this type. As WU CHAO<sup>9</sup> said, “the Torrey Canyon disaster could be seen as a starting point for victims of pollution and for the protection of the environment”.

The *Torrey Canyon* case made the governments of United Kingdom and France, States directly affected by the incident, to bring the issue of maritime pollution before the IMO, back in those days still known as IMCO. As a result, a legal committee to deal with oil pollution was created and, in 1967 the Legal Committee of the IMO was established.<sup>10</sup>

Another consequence of the *Torrey Canyon* incident was the adoption, on 29 November 1969, of the CLC, which entered into force on 19 June 1975, and was ratified by Brazil in 1977.<sup>11</sup> This Convention was created to ensure that adequate compensation is granted to victims who suffer oil pollution damage resulting from maritime casualties involving oil-carrying ships.

The CLC of 1969 imposes liability on the shipowner and sets limits on the amount of compensation to be paid to the victims. Due to the fact that the limits imposed by the CLC of 1969 were considered to be too low, in 1971 the Fund Convention was adopted, creating liability on cargo interests and setting limits on the amount of compensation to be paid.<sup>12</sup>

Later on, in 1996, based on the system established under the CLC and under the Fund Convention, the HNS Convention was adopted by the IMO to ensure compensation to victims of accidents involving hazardous and noxious substances, such as chemicals.

However, the IMO international system covering civil liability and compensation for pollution damage was still not complete. Even though there was already a regulation concerning oil spills (CLC), the system still remained without a

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<sup>9</sup> Wu Chao, *Pollution from the Carriage of Oil by Sea: Liability and Compensation*, Kluwer Law International, London, 1996, p. 37.

<sup>10</sup> Legal Committee, accessed at [www.imo.org](http://www.imo.org) on 08 January 2014.

<sup>11</sup> The CLC was promulgated in Brazil by the Decree n. 79.437 on 28 March 1977.

<sup>12</sup> Martinez Gutierrez, Norman A.; *Limitation of Liability in International Maritime Convention: The Relationship between Global Limitation Conventions and Particular Liability Regimes*, Routledge, London/New York, 2011, p. 145.

liability and compensation regime regarding damages caused by bunkers on non-tankers ships.<sup>13</sup>

### 1.3. The Bunkers Convention

Due to the necessity of a legal instrument concerning potential pollution from bunkers, in 1996 a draft of the Bunkers Convention was taken to the Work Programme of the IMO Legal Committee, which had its final text on October 2000, in its 82<sup>nd</sup> Session. Its text was mostly based on the CLC and on the HNS Convention, having as key provisions the strict liability, limitation of liability, prompt and adequate compensation for victims and compulsory insurance to the shipowners.

Finally, the Bunkers Convention was adopted during a diplomatic Conference held at the IMO headquarters, on 23 March 2001, and, to date, over 75 States have ratified, accepted, approved or acceded to this Convention, which is in force since 21 November 2008.

#### 1.3.1. Overview of the Bunkers Convention

##### 1.3.1.1. Definitions

Article 1 of the Bunkers Convention lists 13 definitions that are important to determine the correct applicability of its provisions. *Inter alia*, the Convention defines the following:

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**SHIP**

*Any seagoing vessel and seaborne craft, of any type whatsoever.*<sup>14</sup>

With this definition, it seems that the Convention is applicable to all types of ships. However, Article 4(2) of the Bunkers Convention clearly excludes the applicability of its provisions to warships, naval auxiliary or other ships owned or operated by State and used, for time being, only on Government non-commercial service.

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<sup>13</sup> Griggs Patrick, International Convention on Civil Liability for Bunker Oil Pollution Damage, at <http://www.bmla.org.uk>, accessed on 09 January 2014.

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

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**SHIPOWNER**

*The owner, including the registered owner, bareboat charterer, manager and operator of the ship.*<sup>15</sup> Unlike the CLC, in which the responsibility was focused on the registered owner,<sup>16</sup> this definition indeed extended the list of persons against whom one may bring a claim for pollution damage.

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**BUNKER OIL**

*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.*<sup>17</sup> This Convention only applies if the ship is carrying bunker oil and this one causes the pollution damage. The oil mentioned in the definition has to be used or intended to be used for the operation or propulsion of the ship,<sup>18</sup> and “is not limited to persistent oils so it may include lighter fuels such as marine diesels and lubricating oils”.<sup>19</sup> Therefore, in a case where the pollution damage is caused by oil carried as cargo, the Bunkers Convention will not apply, been a subject covered by the CLC.

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**POLLUTION DAMAGE**

*(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*

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<sup>15</sup> Article 1(3) of the Bunkers Convention.

<sup>16</sup> Article 1(c) of the CLC.

<sup>17</sup> Article 1(5) of the Bunkers Convention.

<sup>18</sup> Zhu Ling, *Compulsory Insurance and Compensation for Bunker Oil Pollution Damage*, Springer Verlag, Berlin, 2007, p. 22,

<sup>19</sup> Martinez Gutierrez, Norman A.; *The Bunkers Convention 2001: Challenges for its Implementation*, Paper presented at the round-table “EU Maritime Policy and the (Northern) Adriatic” organized by the Maritime Law Association of Slovenia (MLAS), EU Maritime Day 2011, 20 May 2011, Portorož, Slovenia, p. 4.

*loss or damage caused by preventive measures.*<sup>20</sup> Regarding pollution damage, “it is also important to mention that damage caused by explosion and fire is not covered by the Convention, nor, it seems, any claim for damage to the environment which is unquantifiable. Nevertheless, if there is a bunker oil spill following an explosion and fire, the resulting pollution damage would be covered by the Convention”.<sup>21</sup>

### *1.3.1.2. Scope of Application and Exclusions*

The Bunkers Convention, since it had its basis on the CLC, follows the same format. Article 2 of the Bunkers Convention provides that it will only apply to pollution damage caused in the territory, including the territorial sea, and in the exclusive economic zone of a State Party.<sup>22</sup> Also, the Convention may also apply to preventive measures, wherever taken, to prevent or minimize such damage.<sup>23</sup>

At this point it is important to mention that it is not about the place where the oil actually escaped, but about where the damage occurred. In the same way, when it comes to the preventive measures, it is substantial to point it out that the Bunkers Convention does not limit this action to a specific geographic area, like it is done on its Article 2(a), therefore, preventive measures can be taken still on the high seas.

Article 4 determines the situations in which the Bunkers Convention will not apply, which are in the cases defined by the CLC and also to warships and other kind of ships.<sup>24</sup> And, besides excluding those ships from the scope of application, the Bunkers Convention<sup>25</sup> allows the State Party to apply its provisions to those ships, and, if decided so, the State shall notify the Secretary-General of IMO specifying the terms and conditions of such application.

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<sup>20</sup> Article 1(9) of the Bunkers Convention.

<sup>21</sup> Martinez Gutierrez, Norman A.; *Limitation of Liability in International Maritime Convention: The Relationship between Global Limitation Conventions and Particular Liability Regimes*, Routledge, London/New York, 2011, p. 160.

<sup>22</sup> If a State Party has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured.

<sup>23</sup> Article 2(b) of the Bunkers Convention.

<sup>24</sup> See section 1.3.1.1. Definitions – Ships, above.

<sup>25</sup> Article 4(3) of the Bunkers Convention.



### *1.3.1.3. Liability of the Shipowner*

The Bunkers Convention imposes strict liability on the shipowner for pollution damage caused by any bunker oil on board or originating from the ship at the time of the incident. Also, if the incident consists of a series of occurrences having the same origin, the liability will attach the shipowner at the time of the first occurrence.<sup>26</sup>

Article 3(2) of the Bunkers Convention determines that the liability is joint and several when more than one person is found liable.

As Ling Zhu rightly pointed “apparently, the purpose of these Articles is to hold all persons and ships liable when two or more ships are involved. It is reasonable, since if one of them is unfortunately insolvent, the others must therefore pay the whole costs of pollution damage claimed under the Convention”.<sup>27</sup>

However, the Convention also states under Article 3(6) that nothing in its provisions shall prejudice any right of recourse of the shipowner which exists independently of the Convention.

Considering that the liability is strict, there is no need of proof of fault to seek compensation. And, apart from being strict, the liability is not absolute, considering that the Convention determines under Article 3(3) certain circumstances in which the shipowner may exempt himself from the liability if he 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.

Also, if the shipowner proves that the damage resulted from an act or omission by the person who suffered the damage, he may exonerate himself wholly or partially from the liability from this person.<sup>28</sup>

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<sup>26</sup> Article 3(1) of the Bunkers Convention.

<sup>27</sup> Zhu Ling, *Compulsory Insurance and Compensation for Bunker Oil Pollution Damage*, Springer Verlag, Berlin, 2007, p. 30.

<sup>28</sup> Article 3(4) of the Bunkers Convention.

#### 1.3.1.4. Limitation of Liability

In Article 6, the Bunkers Convention settles the right of the shipowner and insurers to limit liability under any applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims of 1976 (LLMC), as amended,<sup>29</sup> which provides a global limitation of liability.

Regarding this matter, Brazil provides regulation for limitation of liability in Article 494 of the Brazilian Commercial Code of 1850 and has also ratified the International Convention for the Unification of Certain Rules Relating to the Limitation of the Liability of Owners of Seagoing Vessels, of 1924 (1924 Convention).

Article 494<sup>30</sup> of the Brazilian Commercial Code provides that the liability of the shipowner will cease when he abandons his ship and freight. On the other hand, the 1924 Convention provides that the liability of the owner of a seagoing vessel is limited to an amount equal to the value of the vessel, the freight, and the accessories of the vessel.<sup>31</sup>

Considering that the Executive Decree that promulgated the implementation of the 1924 Convention into Brazilian law did not revoke Article 494 of the Brazilian Commercial Code, both rules are applicable when concerning limitation of liability.

Notwithstanding, "... the *travaux préparatoires* of the Bunkers Convention reveals that the intention of the 2001 Diplomatic Conference was that any claim subject to that Convention would be subject to limitation under the LLMC Convention (as amended)",<sup>32</sup> which Brazil is not a party yet.

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<sup>29</sup> International Convention on Limitation of Liability for Maritime Claims of 1976, entry into force 1 November 1986. Amended by the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976, entry into force 13 May 2004.

<sup>30</sup> Código Comercial de 1850, artigo 494 - Todos os proprietários e compartes são solidariamente responsáveis pelas dívidas que o capitão contrair para consertar, habilitar e aprovisionar o navio; sem que esta responsabilidade possa ser ilidida, alegando-se que o capitão excedeu os limites das suas faculdades, ou instruções, se os credores provarem que a quantia pedida foi empregada a benefício do navio (artigo nº. 517). Os mesmos proprietários e compartes são solidariamente responsáveis pelos prejuízos que o capitão causar a terceiro por falta da diligência que é obrigado a empregar para boa guarda, acondicionamento e conservação dos efeitos recebidos a bordo (artigo nº. 519). **Esta responsabilidade cessa, fazendo aqueles abandono do navio e fretes vencidos e a vencer na respectiva viagem.** Não é permitido o abandono ao proprietário ou comparte que for ao mesmo tempo capitão do navio.

<sup>31</sup> Article 1 of the International Convention for the Unification of Certain Rules Relating to the Limitation of the Liability of Owners of Seagoing Vessels (1924).

<sup>32</sup> Martinez Gutierrez, Norman A.; The Bunkers Convention 2001: Challenges for its Implementation, Paper presented at the round-table "EU Maritime Policy and the (Northern) Adriatic" organized by the Maritime Law Association of Slovenia (MLAS), EU Maritime Day 2011, 20 May 2011, Portorož, Slovenia, p. 13.

In this respect, bearing in mind the duty of a State Party to ensure that the shipowner has the right to limit liability for bunker oil pollution claims and also considering the intention of the 2001 Diplomatic Conference, when implementing the Bunkers Convention, Brazil shall provide an express regulation stipulating the limits of liability for the Bunkers Convention, keeping the harmonization of international maritime law.

Although the ratification of the LLMC Convention is the most correct action to be taken, until that is done, it seems to be the best option for the country to create a regulation granting to action under the Bunkers Convention the same limits imposed by the LLMC Convention, as amended.

#### *1.3.1.5. Compulsory Insurance or Financial Security*

As it is done under the CLC, the Bunkers Convention puts an obligation on the registered owner of a ship to maintain insurance or other financial security to cover the liability settled on its Article 6 (national or international regime). This provision is determined by Article 7 of the Convention and it does not apply to all ships, only for those having a gross tonnage greater than 1,000 registered in a State Party.

To attest the compliance of the compulsory insurance, a certificate must be issued to each ship by an authority of a State Party, and this certificate must contain, among other information, the name and principal place of business of the insurer and the period of validity of the certificate which shall not be longer than the period of validity of the insurance or security.<sup>33</sup>

The certificate, which shall be carried on board of each vessel,<sup>34</sup> shall be written in the language of the State Party or in English, French or Spanish,<sup>35</sup> and will be issued by an institution or organization authorized by the State Party.<sup>36</sup>

And again, such as it is determined under CLC,<sup>37</sup> Article 7(10) of the Bunkers Convention grants the right to the victim to bring any compensation claim for pollution damage directly against the insurer or the person providing financial security. Indeed,

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<sup>33</sup> Article 7(2) of the Bunkers Convention.

<sup>34</sup> Article 7(5) of the Bunkers Convention.

<sup>35</sup> Article 7(4) of the Bunkers Convention.

<sup>36</sup> Article 7(3) of the Bunkers Convention.

<sup>37</sup> Article 7(8) of the CLC.

the concept of direct action against the insurer has become one of the distinct features of the insurance obligation under international civil liability conventions.<sup>38</sup>

#### *1.3.1.6. Time Limits*

The Bunkers Convention provides a certain period of time between which the claim for damage has to be brought by the victim. Article 8 of the Convention actually sets two different time limits: 3 years and 6 years.

Thus, the Convention considers the right to compensation extinguished unless the action is brought thereunder within 3 years from the date when the damage occurred.<sup>39</sup> However, the Convention provides that no action shall be brought more than 6 years from the date of the incident which caused the damage. For an instance, if the damage occurred after 4 years of the incident, one will have a time limit of 2 years to bring an action.

Also, the Convention defines that if the incident consists of a series of occurrences, the time limit of 6 years will run from the date of the first such occurrence.

#### *1.3.1.7. Jurisdiction, Recognition and Enforcement*

Article 9 of the Bunkers Convention stresses the jurisdiction of a State Party in relation to pollution damage caused in the territory, the territorial sea and the area referred on its article 2, already mentioned under section 1.3.1.2. above. Under Article 9 (3) the Convention imposes an obligation on the State Party to ensure that its courts have jurisdiction to entertain actions for compensation based on the Convention.

Also, the Convention determines that judgments given by Court with jurisdiction shall be recognized by any other State Party<sup>40</sup> and also enforceable in each State Party as soon as the formalities have been complied.<sup>41</sup>

### **1.4. The implementation of the Bunkers Convention into the Brazilian Law**

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<sup>38</sup> Zhu Ling, *Compulsory Insurance and Compensation for Bunker Oil Pollution Damage*, Springer Verlag, Berlin, 2007, pp. 40 - 41.

<sup>39</sup> Article 8 of the Bunkers Convention.

<sup>40</sup> Article 10(1) of the Bunkers Convention.

<sup>41</sup> Article 10(2) of the Bunkers Convention.

### ***1.4.1. Why is it important?***

Brazil is the largest country in South America. The Equator and Tropic of Capricorn pass through Brazil and most of its land is situated on the lower latitudes of the globe, making it a Tropical Country. Brazil's coast extends to 7,367 kilometers<sup>42</sup> to the Atlantic Sea, and has a territorial sea of 3,6 million square kilometers.<sup>43</sup>

Throughout all its land, Brazil has 34 maritime ports that are managed by the *Secretaria Especial dos Portos* (Special Secretariat of Ports), being 8 in the southern part, 5 in the northern part, 10 in southeastern and 11 in the northeast. All of them together have a turnover of about 700 million of tons of goods every year.<sup>44</sup>

As already mentioned, among the IMO Conventions regarding liability and compensation regime for pollution damage, Brazil has ratified only the CLC of 1969. Therefore, in relation to liability and compensation regime for pollution damage, the only branch covered by the municipal law is when the damage occurred by oil spill when carried as cargo or on bunkers of tankers.

As can be seen, there is an immense lacuna under Brazilian law regarding regulation for liability and compensation regime for pollution damage, which can be filled by acceding to the Bunkers Convention and to other IMO Conventions already cited.

Considering the enormous amount of goods carried on ships which pass through the 34 Brazilian's Ports every year, and considering that all of these ships use bunker oil for its operation or propulsion, there is an immense risk of incidents involving bunker oil. Therefore, Brazil needs to provide legislation to ensure that adequate, prompt, and effective compensation is available to the victims of such damages and also to grant limitation of liability for shipowners, protecting the maintenance of the shipping industry as well.

By acceding, adopting and actually implementing the Bunkers Convention, Brazil will be filling one of the major gaps under the national legislation.

### ***1.4.2 How to implement it?***

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<sup>42</sup> Brazilian Institute of Geography and Statistics, position and extension, accessed at [www.ibge.gov.br](http://www.ibge.gov.br) on 12 January 2014.

<sup>43</sup> Brazilian Marine, The Blue Amazon, accessed at [www.marl.mil.br](http://www.marl.mil.br) on 12 January 2014.

<sup>44</sup> Principais Portos, accessed at <http://www2.transportes.gov.br> on 05 February 2014.

As it is known, to introduce an international Convention, such as the Bunkers Convention, into the Brazilian legal system, it is necessary the promulgation of the international text.

Therefore, after the first analysis of the Bunkers Convention, which is carried by the President,<sup>45</sup> and after the approval of the two houses (Chambers of Deputies and Federal Senate) of the National Congress,<sup>46</sup> the President will issue an Executive Decree, which, after published, will make the Bunkers Convention part of the Brazilian Law.

Considering that the time for signature ended on 30 September 2002,<sup>47</sup> Brazil will have to accede to the Bunkers Convention, which is done by the deposit of the instrument with the Secretary-General of the IMO, completing the accession process to the Convention.

After acceding to the Convention, Brazil has to regulate the Bunkers Convention and actually implement it into the Brazilian legal system. It is extremely necessary a law regulating and implementing the Bunkers Convention, especially because the text of the Convention itself leaves some issues to be drawn by the State Party, which are mentioned hereunder.

#### *1.4.2.1. Limitation of Liability*

Regarding limitation of liability, the Bunkers Convention determines that the regime applicable is anyone under national or international law, and actually points it out the LLMC Convention as an option.

As explained in section 1.3.1.4. above, considering that the intention of the Conference that adopted the Bunkers Convention was actually to subject its claims to the limits imposed by the LLMC Convention, until Brazil ratifies the latter, it is necessary to expressly stipulate the limits of liability for the Bunkers Convention in a similar scheme done by the LLMC Convention, keeping the international harmonization and effectiveness of the Convention.

However, taking into account that Brazil provides national law regarding limitation of liability, i.e. the 1924 Convention as well as article 494 of the Brazilian

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<sup>45</sup> Article 84 of the Federal Constitution of Brazil.

<sup>46</sup> Article 49 of the Federal Constitution of Brazil.

<sup>47</sup> Article 12 of the Bunkers Convention.

Commercial Code, the present draft law not only stipulates limits of liability similarly to the LLMC as amended, but also, and most importantly, expressly exclude any possibility of application of the 1924 Convention and of the article 494 of the Brazilian Commercial Code to any claims under the Bunkers Convention.

It is important to bear in mind that this must be done through a transitory provision to avoid duplication of regimes, once Brazil accedes to the LLMC Convention.

And, bearing in mind that Brazil is a party to the International Monetary Fund (IMF), acting in accordance to the LLMC, the limits of liability shall be calculated considering the Special Drawing Rights (SDR).

#### *1.4.2.2. Compulsory Insurance of Financial Security Certificate*

The Bunkers Convention obliges the registered owners of a ship with a gross tonnage greater than 1,000 to maintain insurance or other financial security to cover its liability. Upon this obligation, it is up to the State Party the duty to issue to each ship under its registration a certificate attesting that insurance or the financial security is in force in accordance with the provisions of the Convention.<sup>48</sup>

When implementing the Bunkers Convention, Brazil shall regulate the issues concerning the emission of such certificate, delegating this task to the competent body, which is the *Diretoria dos Portos e Costas* (Direction of Ports and Coasts), member organ of the *Ministério da Marinha* (Marine Ministry).

#### *1.4.2.3. Jurisdiction*

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

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

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<sup>48</sup> Article 7(2) of the Bunkers Convention.

#### *1.4.2.4. Responder Immunity*

IMO adopted a Resolution<sup>49</sup> urging States, when implementing the Bunkers Convention, to consider the need to introduce a legal provision granting immunity for persons taking measures to prevent or minimize the effects of oil pollution, known as responder immunity.

This Resolution took into account that it is desirable to avoid any disincentive that could prevent effective action to minimize the effects of oil pollution incidents. Indeed “this legal protection is important because it encourages persons to take measures to prevent or minimize pollution damage without fear of potential liability”.<sup>50</sup>

Also, the Resolution recommends States Party to exempt persons that take preventive measures from criminal or civil liability, unless the liability results from their personal act or omission, committed with the intent to cause damage or recklessly and with knowledge that such damage would probably result.

Taking all these factors into consideration and to act in accordance with the recommendations of the IMO’s Conference, Brazil, when implementing the Bunkers Convention, shall include provisions concerning responder immunity.

The present draft law, for this purpose, considers the provision under HNS Convention as a model for the legislation, in respect to the IMO Resolution recommendation.

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<sup>49</sup> LEG/CONF.12/11 of 6 February 2001.

<sup>50</sup> Martinez Gutierrez, Norman A.; The Bunkers Convention 2001: Challenges for its Implementation, Paper presented at the round-table “EU Maritime Policy and the (Northern) Adriatic” organized by the Maritime Law Association of Slovenia (MLAS), EU Maritime Day 2011, 20 May 2011, Portorož, Slovenia, p. 5.



## **CHAPTER 2 – LEGISLATION DRAFT**

**2.1. Executive Decree Promulgating the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001**



**PRESIDENCY OF THE REPUBLIC**  
**CIVIL HOUSE**  
**UNDERSECRETARY OF LEGAL AFFAIRS**

Decree n°. xxx, of xx of xxxx of 2014.

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

The President of the Republic, in exercise of the powers conferred upon him by article 84, VIII of the Federal Constitution,

WHEREAS the International Convention on Civil Liability for Bunker Oil Pollution Damage was adopted in 23 of March of 2001;

WHEREAS the Convention was duly submitted to the National Congress, which approved it by the Legislative Decree n°. xxxxx;

WHEREAS the Brazilian Government deposited its instrument of accession to the Convention on *(date)* of *(month)* of *(year)*;

*DECREES:*

**Article 1.** The International Convention on Civil Liability for Bunker Oil Pollution Damage of 2001 attached as an annex to this decree is hereby promulgated.

**Article 2.** Any act that may result in the revision of the aforesaid Convention, as well as any additional amendment that, in terms of article 49, I of the Federal Constitution, may result in charges or onerous commitments of the national patrimony shall be subject to the approval of the National Congress.

**Article 3.** This Decree enters into force as from the date of its publication.

Brasília, xx of xxxxx of 2014.

***Dilma Rousseff***  
President of Republic

**The States Parties to this Convention,**

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

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

**NOTING the success of the International Convention on Civil Liability for Oil Pollution Damage, 1992 and the International Convention on the**

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

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

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

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

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

**HAVE AGREED as follows:**

#### **ARTICLE 1 - DEFINITIONS**

For the purposes of this Convention:

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

than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and

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

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

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

12. "Organization" means the International Maritime Organization.

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

## **ARTICLE 2 - SCOPE OF APPLICATION**

This Convention shall apply exclusively:

(a) to pollution damage caused:

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

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

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

## **ARTICLE 3 - LIABILITY OF THE SHIPOWNER**

1. Except as provided in paragraphs 3 and 4, the ship-owner 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 ship-owner 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 ship-owner if the ship-owner proves that:

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

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

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

4. If the 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, the ship-owner may be exonerated wholly or partially from liability to such person.

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

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

#### **ARTICLE 4 - EXCLUSIONS**

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

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

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

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

#### **ARTICLE 5 - INCIDENTS INVOLVING TWO OR MORE SHIPS**

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

#### **ARTICLE 6 - LIMITATION OF LIABILITY**

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

#### **ARTICLE 7 - COMPULSORY INSURANCE OR FINANCIAL SECURITY**

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

2. A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This certificate shall be in the form of the model set out in the annex to this Convention and shall contain the following particulars:

- (a) name of ship, distinctive number or letters and port of registry;
  - (b) name and principal place of business of the registered owner;
  - (c) IMO ship identification number;
  - (d) type and duration of security;
  - (e) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established;
  - (f) period of validity of the certificate which shall not be longer than the period of validity of the insurance or other security.
3. (a) A State Party may authorize either an institution or an organization recognized by it to issue the certificate referred to in paragraph 2. Such institution or organization shall inform that State of the issue of each certificate. In all cases, the State Party shall fully guarantee the completeness and accuracy of the certificate so issued and shall undertake to ensure the necessary arrangements to satisfy this obligation.
- (b) A State Party shall notify the Secretary-General of:
- (i) The specific responsibilities and conditions of the authority delegated to an institution or organization recognised by it;
  - (ii) The withdrawal of such authority; and
  - (iii) The date from which such authority or withdrawal of such authority takes effect.
- An authority delegated shall not take effect prior to three months from the date on which notification to that effect was given to the Secretary-General.
- (c) The institution or organization authorized to issue certificates in accordance with this paragraph shall, as a minimum, be authorized to withdraw these certificates if the conditions under which they have been issued are not maintained. In all cases the institution or organization shall report such withdrawal to the State on whose behalf the certificate was issued.
4. The certificate shall be in the official language or languages of the issuing State. If the language used is not English, French or Spanish, the text shall include a translation into one of these languages and, where the State so decides, the official language of the State may be omitted.
5. The certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a State Party, with the authorities issuing or certifying the certificate.
6. An insurance or other financial security shall not satisfy the requirements of this article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2 of this article, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 5 of this article, unless the certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this article.
7. The State of the ship's registry shall, subject to the provisions of this article, determine the conditions of issue and validity of the certificate.
8. Nothing in this Convention shall be construed as preventing a State Party from relying on information obtained from other States or the Organization or other international organisations relating to the financial standing of providers of insurance or financial security for the purposes of this Convention. In such cases, the State Party relying on such information is not relieved of its responsibility as a State issuing the certificate required by paragraph 2.

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

10. Any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the registered owner's liability for pollution damage. In such a case the defendant may invoke the defenses (other than bankruptcy or winding up of the ship-owner) which the ship-owner would have been entitled to invoke, including limitation pursuant to article 6. Furthermore, even if the ship-owner is not entitled to limitation of liability according to article 6, the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained in accordance with paragraph 1. Moreover, the defendant may invoke the defence that the pollution damage resulted from the willful misconduct of the ship-owner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the ship-owner against the defendant. The defendant shall in any event have the right to require the ship-owner to be joined in the proceedings.

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

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

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

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

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

## **ARTICLE 8 - TIME LIMITS**

Rights to compensation under this Convention shall be extinguished unless an action is brought there under 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 9 - JURISDICTION**

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

#### **ARTICLE 10 - RECOGNITION AND ENFORCEMENT**

1. Any judgments given by a Court with jurisdiction in accordance with article 9 which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognised in any State Party, except:
  - (a) Where the 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 recognised under paragraph 1 shall be enforceable in each State Party as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be re-opened.

#### **ARTICLE 11 - SUPERSESSION CLAUSE**

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

#### **ARTICLE 12 - SIGNATURE, RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION**

1. This Convention shall be open for signature at the Headquarters of the Organization from 1 October 2001 until 30 September 2002 and shall thereafter remain open for accession.
2. States may express their consent to be bound by this Convention by:
  - (a) signature without reservation as to ratification, acceptance or approval;
  - (b) Signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
  - (c) Accession.
3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

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

#### **ARTICLE 13 - STATES WITH MORE THAN ONE SYSTEM OF LAW**

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2. Any such declaration shall be notified to the Secretary-General and shall state expressly the territorial units to which this Convention applies.

3. In relation to a State Party which has made such a declaration:

(a) in the definition of "registered owner" in article 1(4), references to a State shall be construed as references to such a territorial unit;

(b) references to the State of a ship's registry and, in relation to a compulsory insurance certificate, to the issuing or certifying State, shall be construed as referring to the territorial unit respectively in which the ship is registered and which issues or certifies the certificate;

(c) References in this Convention to the requirements of national law shall be construed as references to the requirements of the law of the relevant territorial unit; and

(d) References in articles 9 and 10 to courts, and to judgements which must be recognized in States Parties, shall be construed as references respectively to courts of, and to judgements which must be recognized in, the relevant territorial unit.

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

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

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

#### **ARTICLE 15 - DENUNCIATION**

1. This Convention may be denounced by any State Party at any time after the date on which this Convention comes into force for that State.

2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.

#### **ARTICLE 16 - REVISION OR AMENDMENT**

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

#### **ARTICLE 17 - DEPOSITARY**

1. This Convention shall be deposited with the Secretary-General.
2. The Secretary-General shall:
  - (a) Inform all States which have signed or acceded to this Convention of:
    - (i) Each new signature or deposit of instrument together with the date thereof;
    - (ii) The date of entry into force of this Convention;
    - (iii) The deposit of any instrument of denunciation of this Convention together with the date of the deposit and the date on which the denunciation takes effect; and
    - (iv) Other declarations and notifications made under this Convention.
  - (b) Transmit certified true copies of this Convention to all Signatory States and to all States which accede to this Convention.

#### **ARTICLE 18 - TRANSMISSION TO UNITED NATIONS**

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

#### **ARTICLE 19 - LANGUAGES**

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

**CERTIFICADO DE SEGURO OU OUTRA GARANTIA FINANCEIRA RELATIVO À  
RESPONSABILIDADE CIVIL POR DANO CAUSADO POR POLUIÇÃO DE ÓLEO DO  
PRÓPRIO NAVIO (BUNKER OIL)**

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

**Emitido em conformidade com as disposições do artigo 7 da Convenção Internacional sobre  
Responsabilidade Civil por Dano Causado por Poluição de Óleo do próprio Navio (Bunker Oil), de  
2001, promulgada pelo Decreto nº. xxx.** *Issued in accordance with the provisions of article 7 of the International Convention  
on Civil Liability for Bunker Oil Pollution Damage, 2001, promulgated by the Decree nº. xxx.*

<b>Nome do Navio</b> <i>Name of the Ship</i>	<b>Número e Letras Indicativas</b> <i>Distinctive Number or Letters</i>	<b>Número IMO de identificação</b> <i>IMO number</i>

<b>Porto de Registro</b> <i>Porto of Registry</i>	<b>Nome e endereço completo do principal local de negócios do proprietário registrado</b> <i>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</i>

**Certifica-se que o navio acima mencionado está coberto por uma apólice de seguro ou outra  
garantia financeira que cumpre com as disposições do artigo 7 da Convenção Internacional sobre  
Responsabilidade Civil por Dano Causado por Poluição de Óleo do próprio Navio ( Bunker Oil), de  
2001.** *This is to certify that the above ship is covered by an insurance or other financial security which complies with the provisions of  
Article 7 of the International Convention on Civil Liability for Damage Caused by Oil Pollution of the ship itself (Bunker Oil), 2001.*

<b>Tipo de Garantia</b> <i>Type of Security</i>	
<b>Duração da Garantia</b> <i>Duration of the Security</i>	
<b>Nome do(s) segurador(es) e/ou fiador(es)</b> <i>Name of the insurer(s) and/or guarantor(s)</i>	
<b>Endereço do(s) segurador(es) e/ou fiador(es)</b> <i>Address of the insurer(s) and/or guarantor(s)</i>	

**Este certificado é válido até:** .....  
*(This certificate is valid until)*

**Este certificado foi emitido pela Diretoria dos Portos e Costas (Ministério da Marinha) com a  
autorização do Governo Brasileiro.** *(The present certificate is issued by the Diretoria dos Portos e Costas (Marine Ministry)  
with the authorization of the Brazilian Government.)*

\_\_\_\_\_  
a  
**(Local/Place)**

\_\_\_\_\_  
**(Data/Date)**

\_\_\_\_\_  
**(Assinatura e título do funcionário que emite ou  
autentica o certificado/ Signature and title of certifying  
official)**

**2.2. Legislative Decree Implementing the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001**



**FEDERAL SENATE**  
**SECRETARIAT OF INFORMATION**  
**UNDERSECRETARY OF LEGAL AFFAIRS**

Decree n°. xxx, of xx of xxxx of 2014

Which regulates the implementation of the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001.

The President of the Republic, in exercise of the powers conferred upon him by article 81, III of the Federal Constitution,

*DECREES:*

## CHAPTER 1

### PRELIMINARY PROVISIONS

**Article 1.** The present Decree regulates the implementation of the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001, promulgated by Decree n°. xxx, of xx of xxxx of 2014.

**Article 2.** For the purpose of the present Decree, the definitions under Article I of the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001, promulgated by Decree n°. xxx, of xx of xxxx of 2014, hereby referred to as Bunkers Convention shall apply mutatis mutandis to this Decree.

## CHAPTER 2

### LIMITATION OF LIABILITY

**Article 3.** Regarding the limitation of liability referred to in the Bunkers Convention, the limits of liability shall be calculated as follows:

§1°. 1 million Special Drawing Rights for a ship with a tonnage not exceeding 2,000 tons.

§2°. For a ship with tonnage in excess thereof, the following amount in addition to that mentioned in paragraph 1°:

- a) For each ton from 2,001 to 30,000 tons, 400 Special Drawing Rights;
- b) For each ton from 30,001 to 70,000 tons, 300 Special Drawing Rights;
- c) For each ton in excess of 70,000 tons, 200 Special Drawing Rights.

§3°. For the purpose of calculation of limitation of liability, tons are the gross tonnage of the liable ship.

§4°. Until the State ratifies and implements the Convention on Limitation of Liability for Maritime Claims or until a new limitation of liability regime be established, the present regulation shall apply to all claims brought before Brazilian courts under the Bunkers Convention, being excluded of application any other regime of limitation of liability.

## CHAPTER 3

### COMPULSORY INSURANCE CERTIFICATE

**Article 4.** The registered owner of a ship having a gross tonnage greater than 1,000 shall maintain insurance or other financial security allowed by the Convention in an amount equal to the limits of liability granted in Chapter 2 of the present Decree.

**Article 5.** The *Diretoria dos Portos e Costas*, member organ of the *Ministério da Marinha*, is responsible to issue to ships registered in Brazil a Certificate attesting that the compulsory insurance or the financial security mentioned on Article 3 above is in force in accordance with the provisions of the Bunkers Convention.

§1º. The Certificate issued shall comply with all the determinations of the Bunkers Convention.

§2º. The Certificate shall be issue in accordance to and in the form of the model provided by the Bunkers Convention and its text shall be in Portuguese and also contain a translation to English.

§3º. Each Certificate will be valid for the same period of time that the insurance or the financial security is valid, not exceeding 2 years.

**Article 6.** No ships registered in Brazil and having a gross tonnage greater than 1,000 shall operate at any time without having the Certificate mentioned in Article 5 above.

**Article 7.** The *Diretoria dos Portos e Costas*, member organ of the *Ministério da Marinha*, shall always require the presentation of the Certificate to all ships having a gross tonnage greater than 1,000, wherever registered, entering or leaving a port in Brazil's territory, or arriving at or leaving an offshore facility in Brazil's territorial sea.

**Single Paragraph.** The *Diretoria dos Portos e Costas* may detain the ship that does not comply with the determination of the present Chapter, until it is fulfilled.

## CHAPTER 4

### RESPONDER IMMUNITY

**Article 8.** No claim for compensation for damage under the Bunkers Convention may be brought against the servants or agents of the owner or the members of the crew, the pilot or any other person who, without being a member of the crew, performs services for the ship, any person performing salvage operations (including his servants or agents) with the consent of the owner or on the instructions of a competent public authority, take measures to prevent or minimize the effects of oil pollution damaged caused by bunker oil spill in Brazil's territory, territorial sea or in its exclusive economic zone, unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

**Article 9.** The person or persons taking measures to prevent or minimize the effects of oil pollution damaged caused by bunker oil spill in Brazil's territory, territorial sea or in its exclusive economic zone are exempt from criminal or civil liability, unless the liability results from theirs personal action or omission, committed with the intent to cause damage or recklessly and with knowledge that such damage would probably result.

CHAPTER 5  
FINAL PROVISIONS

**Article 10.** All Brazilian Courts have jurisdiction to entertain actions for compensation under the Bunkers Convention, in accordance to the provisions of the national law regarding internal competence.

**Article 11.** The *Diretoria dos Postos e Custas* may issue internal rules for the proper implementation of the present Decree.

**Article 12.** This Decree shall enter into force on the date of its publication.

Brasília, xx of xxxxx of 2014.

***Dilma Rousseff***  
President of Republic