

**IMO  
INTERNATIONAL MARITIME LAW INSTITUTE  
MALTA**

**Merchant Shipping (Liability for Bunker Oil Pollution  
Damage) Regulations, 2002**

A *legal draft* submitted in partial fulfilment of the requirement for  
the award of the Degree of Master of Laws (LL.M.)  
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## ***Explanatory Note***

### **Origins**

The International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (The Bunker Oil Pollution Damage Convention 2001), was adopted by a diplomatic conference which took place in London in March 2001, and is substantially similar in structure to the broad framework of the International Convention on Civil Liability for Oil Pollution Damage 1992 (CLC 1992)<sup>1</sup>.

### **Aims**

The Convention is aimed specifically at addressing the serious problems of damage caused by bunker oil spills from vessels; an area not so extensively covered by the provisions of the Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC Convention). Such a Convention has enthusiastically been welcomed by IMO's secretary general W. O'Neill as a *major contribution towards the protection of the environment of this planet*.

### **Strict Liability and Definitions**

In the Bunker Oil Pollution Convention 2001, a regime of strict liability is imposed in relation to pollution damage caused by bunker spills from ships; a ship is defined as meaning any seagoing vessel and seaborne craft, of any type whatsoever<sup>2</sup>. *Bunker Oil* is defined as meaning *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>3</sup>. As is the case of CLC 1992, liability is imposed on the ship owner. However, the new Convention is different to CLC 1992, in the sense that the term *Ship owner* is defined widely to include the registered owner, bareboat charterer, manager and operator of the ship<sup>4</sup>. The

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<sup>1</sup> Dr.G.Gauci and Mr.J.Pace, *Report on the Bunker Oil Pollution Damage Convention Adopted at IMO*, Vol. 2, No. 4 of the Shipping and Transport Lawyer Journal, Pg 17

<sup>2</sup> Art 1(1) of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001

<sup>3</sup> Ibid, Art 1(5)

<sup>4</sup> Ibid, Art 1(3)

definition of *Pollution damage* is based on that contained in the CLC 1992<sup>5</sup>; the *Scope of application* provision is also based on the wording of the CLC 1992<sup>6</sup>. Like CLC 1992, the new Convention also provides the ship owner with a number of defenses; for instance, there is protection in the case where the damage was caused by an act of war or a *natural Phenomenon of an exceptional, inevitable and irresistible character*<sup>7</sup>.

### **Limitation**

Unlike CLC 1992 and the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 (HNS Convention), the Bunker Oil Pollution Damage Convention 2001 does not create a distinct regime of limitation of liability. Instead, article 6 allows for limitation of liability to be dealt with under any applicable national or international regime, providing as an example the 1976 Limitation Convention *as amended*. The Diplomatic Conference also adopted a resolution which urges all States to ratify or accede to the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims 1976.

### **Compulsory Insurance**

The new Convention in article 7, provides for a system of compulsory insurance. The registered owner of a ship having a *gross tonnage greater than 1000 registered in a State Party (to the Convention)* is required to maintain insurance<sup>8</sup>. This insurance must 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 Liability for Maritime Claims*

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<sup>5</sup> Art 1(9) of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001

<sup>6</sup> *Ibid.*, Art 2

<sup>7</sup> *Ibid.*, Art 3(3)(a)

<sup>8</sup> *Ibid.*, Art 7(1)

1976 as amended<sup>9</sup>. The Convention provides that a State party shall not permit such ships flying its flag to operate at any time without the requisite certificate of insurance<sup>10</sup>.

The Convention also provides for a right of direct action against the person providing financial security for the registered owner's liability for bunker oil pollution damage. In such a case, a number of defences are available to the defendant. It is to be noted, however, that paragraph 15 of article 7 of the Convention provides for a mechanism which allows a State to declare that the compulsory insurance provisions do not apply to ships operating exclusively within the territory, including the territorial sea, of that State.

### **Responder Protection**

Unlike CLC 1992 and the HNS Convention 1996, the Bunker Oil Pollution Damage Convention 2001 does not make provision to protect individuals taking preventive measures or salvors. The issue was the subject of intensive debate and was finally settled by the adoption of another resolution by the Diplomatic Conference, this resolution recommends that persons taking responsible preventive measures in relation to oil pollution should 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.*

### **Conclusion**

Representatives of the 64 States signed the Final Act adopting the Convention and the three resolutions annexed to it concerning limitation of liability, promotion of technical co-operation, and responder protection. Article 14 of the Convention provides that the Convention shall enter into force *one year following the date on which eighteen States, including five States each with ships whose combined*

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<sup>9</sup> Art 7(1) of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001

<sup>10</sup> Ibid., Art 7(2)

*gross tonnage is not less than one million have either signed it without reservation as to ratification, acceptance, approval or accession with the Secretary General (of the IMO).*

As stated by the Secretary General of the IMO in his closing speech, the adoption of the Bunker Oil Pollution Damage Convention 2001 constitutes a milestone in the process of environmental from all types of ships – and not simply tankers – pose a serious threat to the environment; through this Convention constructive action has now been taken to deal with the problem<sup>11</sup>.

### **The Problems Malta would have to clarify before adopting the Bunker Oil Convention**

Following its application to join the European Union, Malta has undertaken the obligation to ensure that all legislation enacted after such submission is to be in conformity with the *acquis communautaire*. Thus an uncertainty hangs over the ability of Malta as well as other European Union States to be able to ratify the Bunker Convention because of a recently adopted European Community regulation on jurisdiction and judgment enforcement.

Sweden which at the time the conference was held the E.U. presidency drew attention to the fact that in December 22, 2000, the community adopted Reg EC 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. According to the submission, by adopting common rules in these matters, Member states had effectively transferred their national competence in their area to the community. According to the *Comite Maritime International* President and former Ince and Co senior member Patrick Griggs,

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<sup>11</sup> Dr.G.Gauci and Mr.J.Pace, *Report on the Bunker Oil Pollution Damage Convention adopted at IMO*, Vol. 2, No. 4 of the *Shipping and Transport Lawyer Journal*, Pg 17.

although Sweden withdrew the proposal *this must have some doubts in the minds of delegates from E.U. States as to their ability to ratify the Convention*<sup>12</sup>.

There is exclusive Community competence as regards its provisions on jurisdiction, recognition and enforcement contained in articles 9 and 10 of the Bunkers Convention, as these effect the corresponding rules of Council Regulation 44/2001. In accordance with the case law of the Court of Justice, Member States, whether acting individually or collectively, lose their right to assume obligations with third countries as and when common rules which could be affected by those obligations come into being. It follows that only the Community is competent for the negotiation, conclusion and fulfillment of such international commitments.<sup>13</sup>

Articles 9 and 10 of the Bunkers Convention include provisions on the jurisdiction, recognition and enforcement of judgements relating to the application of the Convention. Article 9 mandates the exclusive jurisdiction of the State party where pollution damage occurred. Moreover, article 10 requires the recognition of a judgment given by a Court with jurisdiction where it is no longer subject to ordinary forms of review except where the judgment was obtained by fraud, or where the defendant was not given reasonable notice and a fair opportunity to present his case. Judgments shall be enforceable in each State party where the judgment was given have been complied with. Those formalities shall not permit the merits of the case to be re-opened.

On the other hand Council Regulation 44/2001 sets out common rules on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The Regulation binds all Member States except for Denmark. The 1968 Brussels Convention remains in force in the relations between Denmark and the other Member States. The common rules on

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<sup>12</sup> *Uncertainty Remains Over EU States to Ratify Bunker Convention*, Lloyds List, Law Section, 4 April, 2001.

<sup>13</sup> *Ibid.*

jurisdiction of Regulation 33/2001 apply when the defendant is domiciled in one of the Member States bound by the Regulation, while a defendant not domiciled in a Member State may be brought before the courts of each Member State in accordance with its national rules on jurisdiction. The jurisdiction regime is based in the first place on the domicile of the defendant. In addition, in matters relating to tort, delict or quasidelict, a person domiciled in a Member State may be sued in the Member State where the harmful event occurred or may occur.

Regulation 44/2001 stipulates that a judgment given in a Member State shall be recognized and enforced in other Member States without any special procedure being required. However, a limited number of grounds of non-recognition are provided to take into account public policy considerations, respect for the rights of defense and the existence of certain irreconcilable judgments.

In order to recognize the Community dimension of the ratification of the Convention, and to safeguard the objectives of the Convention, the following declaration was made by the EU Member States attending the conference:

*The Member States of the European Union attending the International Conference on Liability and Compensation for Bunker Oil Pollution Damage mentioned above, recognize the importance of the International Convention on Civil Liability and Compensation for Bunker Oil Pollution Damage.*

*They note that certain issues regarding the relationship between the Convention and recent EU legislation on jurisdiction and the recognition and enforcement of judgments will have to be addressed at EU level. Furthermore, they recognize the desirability of this Convention entering into force rapidly and the need for a continued effort within the European Union to achieve the result.'*

In order to safeguard the Community interests, whilst enabling the Member States to ratify the convention, a Council decision to exceptionally authorize ratification, subject to making a reservation, is proposed. In such reservation

Member States would undertake to apply Regulation 44/2001 in their mutual relations.

As regards to the rules on jurisdiction, the situation is more complex. Article 9 of the Bunkers Convention is elaborated with the specific suitability for disputes arising from ship-source pollution incidents in mind. In line with existing maritime pollution liability conventions it mandates the exclusive jurisdiction of the State Party or States Parties, where the pollution damage has occurred. This contrasts to the multiple grounds of jurisdiction available under Regulation 44/2001. In assessing the difference between the two jurisdiction regimes, the underlying reasons for limiting the availability of jurisdictions in maritime pollution cases need to be considered. Those reasons include the efforts to avoid 'forum shopping', ensuring the equal treatment of claimants, a link between the court involved and the action, as well considerations relating to the sound administration of justice aimed at avoiding difficulties involved in settling the same issues, involving the same experts, the same witnesses, the same defendants etc. in different courts in several jurisdictions.

Maritime pollution incidents will frequently involve defendants, including insurers from legal jurisdictions outside the Community. In these cases, Regulation 44/2001, in article 5.3 establishes a similar rule as to the competent jurisdiction, based on the place where the harmful event occurred. The application of the rules of jurisdiction contained in Regulation 44/2001 could therefore be restricted to cases where the defendant, or co-defendant is domiciled within the Community and the pollution damage has occurred in the geographical area of one (or more) Member State(s). In such cases, it is considered that the situation has a predominantly Community dimension and that there are not sufficient grounds to depart from the regime established by the Community law for other types of civil and commercial judgments. In such cases, Regulation 44/2001 shall therefore continue to regulate the mutual relations between Member States.



Such a reservation would be compatible with the object and purpose of the Convention, as required under international law.<sup>14</sup>

Therefore in order to fulfill its obligations to ensure that all legislation enacted is in conformity with the *acquis communautaire*, the instrument of accession of the Government of Malta to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 shall contain the following reservation:

*[On accession by Malta to the European Union], the Government of Malta shall not consider itself bound by article 9 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, under which actions for compensation may be brought only in the courts of State Parties where an incident has caused pollution damage or where preventive measures have been taken to prevent or minimize such damage, only in so far as such action is being taken Therefore the instrument of accession of the Government of Malta to the against a person domiciled in the a Member State of the European Union [in which case such action is to be brought in the courts of the place of domicile of such person].*

### **Incorporation of the Convention in Maltese law**

There are three possibilities to incorporate the *Bunker Oil Pollution Damage Convention* into Maltese law.

1. incorporation through regulations made by the Minister under the power conferred to him by article 308A(1) of the Merchant Shipping Act which states that:

*The Minister may make regulations as appear necessary to give effect to any provision of any of the following which have been ratified or acceded to or accepted by the Government of Malta –*

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<sup>14</sup> Art 19c of the Vienna Convention on the Law of Treaties.

*. . . . any international agreement not mentioned in paragraphs (a) to (c) above which relates to the prevention, reduction or control of pollution of the sea or other waters by matter from ships or which regulates the liability of any person arising from pollution of the sea or other waters;*

2. incorporation through regulations made by the Minister in terms of article 375(1) of the Merchant Shipping Act following a resolution by the House of Representatives in terms of article 375(4) to include the 2001 Bunker Oil Convention in the list of treaties and conventions appearing in article 375(2);
3. incorporation by means of a specific new Act of Parliament.

This project aims to incorporate the provisions of the convention into Maltese law through regulations made under the power conferred to the Minister in terms of article 308A. It is considered possibly the most efficient method.

*DRAFT*

L.N. of 2002

**MERCHANT SHIPPING ACT  
(CAP. 234)**

**Merchant Shipping (Liability for Bunker Oil Pollution Damage) Regulations, 2002**

IN exercise of the powers conferred by articles 308A, 374 and 375 of the Merchant Shipping Act, the Minister for Transport and Communications has made the following regulations: —

Short title

1. (1) These regulations may be cited as the Merchant Shipping (Liability for Bunker Oil Pollution Damage) Regulations, 2002.

(2) These regulations shall come into force on such date as the Minister may, by notice in the Gazette, appoint, and different dates may be so appointed for different provisions and different purposes of these regulations.

Interpretation.

Cap. 234.

2. (1) In these regulations, unless the context otherwise requires —

“the Act” means the Merchant Shipping Act;

“Convention” means the 2001 Bunker Oil Convention;

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

“registrar-general” means the Registrar-General of Shipping and Seamen appointed under article 363 of the Act and includes any person established by law, acting under his authority;

Cap. 226

“territorial waters of Malta” shall have the same meaning as is assigned to them in the Territorial Waters and Contiguous Zone Act.

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

Certain provisions of the convention given force of law in Malta.

3. (1) Subject to the provisions of subregulations (2) to (5) hereof those provisions of the Convention contained in the Schedule to these regulations shall form part of and be enforceable as part of the Law of Malta.

(2) Where any action is brought in Malta in terms of this Convention any reference to “the Court” shall be read and construed as reference to the Civil Court, First Hall.

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

economic zone of Malta as may be established in accordance with international law or similar area determined by Malta in accordance with international law, including the waters enclosed in Malta's contiguous zone claim and the waters superjacent to Malta's continental shelf claim, or if preventive measures have been taken to prevent or minimize such damage in that area, action for compensation under the provisions of the Convention shall be brought in Malta before the Civil Court, First Hall, by presenting a claim before such Court.

Provided that where any such exclusive economic zone or any such similar areas has been established by Malta, the Minister shall by Order in the Gazette prescribe that the provisions of these regulations shall also apply to such exclusive economic zone or such similar area as many be established in such Order:

Provided further that action for compensation against a person domiciled in one of the countries listed in the appropriate Order made by the Minister in the Gazette shall only be brought in the courts of such country of domicile.

(4) The appropriate authority for the purposes of issuing the certificate of insurance referred to in the Convention, in respect of Maltese ships shall be the Registrar-General who subject to the provisions of the same Convention and of these regulations shall determine the condition of issue and validity of such certificate and, in respect of ships flying the flag of a state not party to the Convention shall be the said Registrar-General who shall have such powers as aforesaid or the appropriate authority of a State Party to the Convention in accordance with the provisions thereof.

(5) The applicable international limitation regime for the purposes of the Convention shall be the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

Applicable  
procedure.

4. Subject to the provisions of subregulation 3(3) the Civil Court, First Hall shall have jurisdiction to try and determine cases and actions that in accordance with these regulations are to be brought before it. Such a claim shall be instituted in accordance with subtitle III of the Title VIII of Part I of Book Second of the Code of Organisation and Civil Procedure:

FIRST SCHEDULE  
(Regulation 3)

**Text of articles 1 to 10 of the  
International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001**

**Article 1  
Definitions**

For the purposes of this Convention:

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

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

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

11 "Gross tonnage" means gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I 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**

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

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

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

- (a) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
- (b) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or
- (c) the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

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

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

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

#### **Article 4 Exclusions**

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

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

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

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

**Article 5**  
**Incidents involving two or more ships**

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

**Article 6**  
**Limitation of liability**

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

**Article 7**  
**Compulsory insurance or financial security**

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

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

- (a) name of ship, distinctive number or letters and port of registry;
- (b) name and principal place of business of the registered owner;
- (c) IMO ship identification number;
- (d) type and duration of security;
- (e) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established;



(f) period of validity of the certificate which shall not be longer than the period of validity of the insurance or other security.

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

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

(i) the specific responsibilities and conditions of the authority delegated to an institution or organization recognised by it;

(ii) the withdrawal of such authority; and

(iii) the date from which such authority or withdrawal of such authority takes effect.

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

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

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

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

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

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

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

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

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

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(aXi).

### **Article 8**

#### **Time limits**

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

### **Article 9**

#### **Jurisdiction**

1 Where an incident has caused pollution damage in the territory, including the territorial sea, or in an area referred to in article 2(a)(ii) of one or more States Parties, or preventive measures have been taken to prevent or minimise pollution damage in such territory, including the territorial sea, or in such area, actions for compensation against the shipowner, insurer or other person providing security for the shipowner's liability may be brought only in the courts of any such States Parties.

2 Reasonable notice of any action taken under paragraph 1 shall be given to each defendant

3 Each State Party shall ensure that its courts have jurisdiction to entertain actions for compensation under this Convention

**Article 10**  
**Recognition and enforcement**

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

- (a) where the judgement was obtained by fraud; or
- (b) where the defendant was not given reasonable notice and a fair opportunity to present his or her case.

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

**ANNEX**

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

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

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

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

Type of Security .....

Duration of Security .....

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

Name .....

Address .....

This certificate is valid until .....

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

.....  
(Full designation of the State)

OR

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

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

**At** .....  
(Place)

**On** .....  
(Date)

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

## Explanatory Notes:

1. If desired, the designation of the State may include a reference to the competent public authority of the country where the Certificate is issued.
2. If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.
3. If security is furnished in several forms, these should be enumerated.
4. The entry "Duration of Security" must stipulate the date on which such security takes effect.
5. The entry "Address" of the insurer(s) and/or guarantor(s) must indicate the principal place of business of the insurer(s) and/or guarantor(s). If appropriate, the place of business where the insurance or other security is established shall be indicated.