



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



CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE ACT 2012

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

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Academic Year 2011/2012

Acknowledgements

I owe my deepest gratitude to God, through him and with him this Legislative Drafting project was possible.

I am heartily thankful to my supervisor, Dr. Norman Martinez, whose encouragement, guidance and support from the initial start to the final draft assisted me to develop my drafting skills and understanding the intricacies of the Bunker Convention and to the dedicated staff at IMLI.

I am grateful to my sister Tamara who has played the role of Editor, my mother for the encouragement and support and my Grenadian home circle who gave me the boost of much needed assistance and provided me with information and resources.

Lastly, I offer my regards and blessings to all of those who supported me in any respect during the completion of the legislative drafting project.

Tanya.

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CIVIL LIABILITY FOR BUNKER OIL POLLUTION ACT

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EXPLANATORY NOTE

INTRODUCTION

On the 23 November 2001 the **International Convention on Civil Liability for Bunker Oil Pollution Damage (“the Bunker Convention”)** was adopted at a diplomatic conference at the International Maritime Organization’s (“IMO”) Headquarters in London, England.

The Bunker Convention entered into force on the 21 November 2008 and as of 31 March 2012, there are sixty-four (64) States that are Parties to the said Convention, representing 89.12% of the world tonnage. However, Grenada is not one of the sixty-four (64) States that is a party to the Bunker Convention.

Background

The main aim of the Bunker Convention is to ensure the accessibility of adequate, prompt and effective compensation to persons who suffer damage caused by bunker oil spills, when the oil is carried as fuel in ships’ bunkers. The Bunker Convention covers all ships not covered by the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC)¹ as amended by the **Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC Protocol 1992)**.²

Bearing in mind the international legal framework comprising the **CLC** as amended by the **CLC Protocol 1992**, **the International Convention on Liability and Compensation for Damage in the Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention)**³ and **the 1976 Convention on Limitation of Liability for Maritime Claims (LLMC Convention)**,⁴ it was identified that there was a lacuna in the international legal regime for liability and compensation for oil pollution damage from ships. The Bunker Convention was adopted to fill this lacuna. In fact, as Griggs notes the Bunker Convention “*plugs a gap in the pollution legislation*

¹ Adopted on the 29 November 1969 and entered into force on 19 June 1975.

² Adopted on the 27 November 1992 and entered into force on 30 May 1996.

³ Adopted in London in May 1996 and has not entered into force due to insufficient ratifications.

⁴ Adopted on the 19 November 1976 and entered into force 1 December 1986.

so that all substances which may escape from a ship are now covered by a liability and compensation regime.”⁵

Civil Liability for oil pollution dates as far back to 1967 (forty plus years), to the *Torrey Canyon* disaster. The *Torrey Canyon* was a Liberian registered vessel that went aground between Land’s End and Scilly Isles. As a result of this, a considerable amount of crude oil was spilt causing significant maritime pollution and damage. Consequently, the IMO at the time known as the Inter-Governmental Maritime Consultative Organization (“IMCO”) set up its Legal Committee to deal with the aspect of civil liability and compensation for oil pollution, due to the fact that there was no regime covering compensation and civil liability for oil pollution damage. The Legal Committee drafted the CLC with the aim of covering pollution damage from spills of persistent oils from vessels. The CLC was adopted on the 29 November 1969 to ensure that adequate compensation is available to persons who suffer oil pollution damage resulting from maritime casualties involving oil-carrying ships.

The CLC makes provisions for oil pollution from sea going vessels and any sea borne craft of any type whatsoever carrying oil in bulk as cargo. The CLC limits the liability to bunker oil pollution spills from oil tankers and does not cover oil pollution spills from other vessels that do not fall under the definition of a “ship” as stipulated in the definition Article of the CLC.

On 27 November 1992 the CLC Protocol 1992 was adopted. The CLC Protocol 1992 extended the CLC and widened the scope for liability for persistent oil pollution spills and covered pollution damage of oil occurring in the exclusive economic zone or equivalent area of a State Party.

Article 2(1) of the CLC Protocol 1992 defined a ship as “[...] *any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted, for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any*

⁵ P. Griggs, ‘A Busy Schedule for International Maritime Law’, 4(1) S&T.L.I (2003) 29 at 30.

*voyage following such carriage unless it is provided that it has no residues of such carriage of oil in bulk aboard.”*⁶

The CLC Protocol 1992, was only intended to apply to tankers constructed exclusively for the carriage of oil whether laden or un-laden ‘dedicated tankers’ and combination ships when they are carrying oil in bulk as cargo and during any voyage following such carriage unless the ship-owner proves that the said ship had no residues of such carriage of oil in bulk abroad.⁷

The *Iron Baron* accident was another catalyst that propelled States to urge IMO to implement a convention dealing with Bunker Oil Spills. In July 1995, the *Iron Baron*, was transporting manganese ore to the port of Launceston, in northern Tasmania, Australia. As it approached the opening of the Tamar River, the vessel was grounded on the Hebe Reef and started leaking bunker oil. It was later estimated that approximately 300 tonnes of bunker oil was spilt, affecting the marine wildlife and their shorelines.⁸ As a result of this incident, Australia rallied support of other States during the 74th session of the IMO Legal Committee, pointing out the defects in the CLC and emphasizing the need for a convention covering bunker oil pollution.

Following the incident with *The Cita*,⁹ the United Kingdom at the 77th Session of the IMO Legal Committee submitted a document highlighting the United Kingdom’s difficulty in pursuing the shipowner of *The Cita* for recovery cost and the fundamental importance of the “*urgent need for an international requirement for shipowners to have effective financial security to meet their liabilities to innocent third parties and that Claimants must have proper access to this security.*”¹⁰

⁶ Article 2 (1), CLC Protocol 1992.

⁷ N. Martinez, *Limitation of Liability in International Maritime Conventions*, Routledge, London, 2011, p. 147.

⁸ <http://www.amsa.gov.au/Marine_Environment_Protection/Major_oil_spills_in_australia/Iron_Baron/index.asp> last accessed on the 15 November 2011.

⁹ *The Cita*, on 26 March 1997 en route from Southampton to Belfast pierced its hull when it ran aground on rocks off the south coast of the Isles of Scilly. At the time *The Cita* had 95 tonnes of fuel oil on board as bunkers.

¹⁰ <http://www.interspill.org/previous-events/2009/14-May/pdf/1000_baker.pdf> last accessed on the 26 November 2011.

As a result of the continued incidents of bunker oil pollution damage and the urgent need to fill the lacuna on 23 November 2001 the Bunker Convention was adopted. The Bunker Convention allows a State Party to have a comprehensive liability and compensation regime for bunker oil pollution.

Recent Bunker Oil Pollution spills

On the 11 March 2009, the 1990 built cargo ship the *Pacific Adventurer*, 23,737 dwt, lost 31 containers of ammonium nitrate overboard off Cape Moreton.¹¹ It was later estimated that up to 270 tonnes of bunker oil was spilled from the ship into the sea due to the punctured holes in the fuel tank.¹² As a result of the bunker oil spill fifty (50) kilometers of the coast of Queensland, Australia was polluted affecting wildlife and the tourism industry.

Most recently, *The Rena*, a Greek owned vessel was grounded off the coast of Tauranga in New Zealand on the 5 October 2011. The ship was carrying 1,700 tonnes of heavy fuel oil. To date it has been estimated that up to 350 tonnes of heavy oil was spilled from the ship into the sea.

Bunker Convention

A detailed examination will be made of the important areas that the Bunker Convention covers.

Scope of Application:-

Under **Article 1 (5)** of the Bunker Convention, bunker oil is defined as “*any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil.*”¹³

¹¹http://www.amsa.gov.au/marine_environment_protection/major_oil_spills_in_australia/Pacific_Adventurer/index.asp last accessed on the 19 December 2011.

¹² M.Jacobson, ‘Bunkers Convention in force,’ (2009) 15 JIML, 21 at 22.

¹³ Article 1 (5), Bunker Convention.

Under the Bunker Convention the meaning of bunker oil is not limited to persistent oil, but may also include non-persistent oils *“lighter fuels as marine diesels and lubricating oil.”*¹⁴ This is a more ample meaning than that of oil under the CLC Protocol 1992, where oil is defined as *“any persistent hydrocarbon material oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil.”*¹⁵

Territorial Application:-

Article 2 of the Bunker Convention stipulates that the Convention applies exclusively to pollution damage *“caused in the territory, including the territorial sea of a State Party, and in the exclusive economic zone [...]”*¹⁶ It goes further to state that if a State Party *“has not established such a zone, in an area beyond and adjacent to the territorial sea of that State.....extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured.”*¹⁷

Section 5 of the **Grenada Territorial Sea and Maritime Boundaries Act 25 of 1989** states that Grenada’s territorial sea extends 12 nautical miles from its baselines.¹⁸ **Section 12** of the said Act stipulates that the exclusive economic zone measures *“a distance of 200 nautical miles from the nearest point of the baselines.”*¹⁹ Accordingly, the Bunker Convention would apply to the 12 nautical miles territorial sea and the 200 nautical miles from the baselines from which the breadth of the territorial sea is measured of exclusive economic zone of Grenada.

Strict Liability:-

Article 3(1) of the Bunker Convention places liability for any pollution damage caused by bunker oil on the shipowner. **Article 1(3)** defines a shipowner as *“the owner,*

¹⁴ N. Martinez, Limitation of Liability in International Maritime Conventions, Routledge, London, 2011, p. 160.

¹⁵ Article I (5), CLC Protocol 1992.

¹⁶ Article 2, Bunker Convention.

¹⁷ Ibid.

¹⁸ Section 5, Grenada Territorial Sea and Maritime Boundaries Act 25 of 1989.

¹⁹ Section 12, Grenada Territorial Sea and Maritime Boundaries Act 25 of 1989.

including the registered owner, bareboat charterer, manager and operator of the ship.”

The Bunker Convention expands the meaning of the word shipowner as compared to the meaning provided under the CLC. By expanding the definition to include the registered owner, manager and bareboat charterer, the list of persons that one can bring a claim against for pollution damage was also widened and no longer restricts liability to the registered owner.

The CLC stipulates that the liability is exclusively on the ‘owner’. Article 1 (3) of the CLC defines ‘owner’ as *“the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However, in the case of a ship owned by State and operated by a company which in that State is registered as the ship’s operator, owner shall mean such company.”*²⁰ The CLC focuses narrowly on the registered owner, whereas under the Bunker Convention shipowner includes the registered owner, bareboat charterer, manager and operator of the ship.

Article 3(2) stipulates that where more than one person is liable in accordance with paragraph 1, their liability shall be joint and several. In other words, the terms “joint and several” are used together and it relates exclusively to pollution damage caused by bunker oil that cannot be separated and distinguished. Therefore, the shipowner has a right to proceed by way of recourse against any person who would have contributed to the pollution damage. **Article 3(6)** states that the Convention does not prejudice any right of recourse of the shipowner which exists independently of the Convention.

Article 4 and 5 of the Bunker Convention go further to lay the foundation upon which liability may be imposed upon the shipowner. Liability under the Bunker Convention is strict but not absolute.²¹ Negligence does not have to be proved in one’s claim for compensation. However, there are certain exceptions provided for under **Article 3 (3)** of the Bunker Convention, which provides that no liability for pollution damage shall be attached 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

²⁰ Article 1 (3), CLC Protocol 1992.

²¹ N. Martinez; *op. cit.*, p. 164.

- 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 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.

The Bunker Convention also fails to make provisions to legally protect persons taking reasonable preventive measures in response to bunker pollution incidents. Unlike the CLC, the Bunker Convention does not contain any channelling provisions excluding claims against parties other than that of the shipowner. This means for example that salvors and persons taking measures to prevent or minimise pollution damage are not protected against compensations claims.

After submission of a draft resolution by Australia, Denmark, Indonesia, Ireland, the Netherlands, Switzerland, the United Kingdom and Hong Kong, addressing this issue the resolution was adopted at the 2001 Diplomatic Conference, encouraging states to protect persons taking measures to prevent or minimize the effects of bunker oil pollution.²²

The resolution, urges that States during the implementation of the Bunker Convention to take into account provisions in national legislations for the protection of persons taking measures to prevent or minimise the effects of bunker oil pollution. The recommendations includes persons who seek to take preventive measures be exempt from liability unless the liability of the damage was a direct result of their personal act or omission, committed with the intention to cause damage, or recklessly and with knowledge that damage would result.²³

States were urged to consider Article 7 (5) (e) of the **HNS Convention** which states “*no claim for compensation for damage under this Convention or otherwise may be made against any person taking preventive measures unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly*

²² N. Martinez; *op. cit.*, p. 163.

²³ Ibid.

*and with knowledge that such damage would probably result,*²⁴ as a guideline when for implementing national legislation.

Limitation of Liability:-

During initial discussion of the drafting of the Bunker Convention, a number of States noted and suggested that a separate free standing fund should be established which would be financed by shipowners, to be solely available to satisfy bunker pollution claims. Objections from the shipowners and the insurance sectors were made towards this proposal.

Article 6 of the Bunker Convention fails to create a distinct limitation regime. Bunker pollution claims are subjected to laws of limitation under national or international regimes. The international regime which will be applied is the LLMC Convention either in its original version of 1976 or as amended by the Protocol thereto adopted in 1996. The national law of the State where the pollution damage occurs will determine the liability of the shipowner.

It must be noted, that the link between the Bunker Convention to the applicable national and international regime results in uncertainty on several points. The limitation amount will differ depending on the State in which the pollution incident occurred.²⁵ Grenada is not a Party to the LLMC Convention, to the 1996 Protocol thereto or to any Convention on limitation of liability. As a result of this, national legislation will have to provide for limitation of liability. If this is not done and the Bunker Convention is acceded to and incorporated into our municipal law, the liability of the shipowner under the Convention will be strict and unlimited.

The 2001 Diplomatic Conference adopted a resolution on limitation of liability in order to provide a solution to the uncertainty. The resolution provided that States that have not already ratified the 1996 Protocol to the LLMC Convention are encouraged to do so. It is

²⁴ Article 7 (5) (e) HNS.

²⁵ M.Jacobsson; *op. cit.*, p. 21 at p. 29.

recommended that when acceding to the Bunker Convention Grenada should also accede to the 1996 Protocol to the LLMC Convention.

Compulsory Insurance:-

Article 7 of the Bunker Convention sets out the need for compulsory insurance or financial security. It mandates that the owner of a ship which has a gross tonnage over 1000 registered in a State Party shall maintain insurance. A certificate must be issued by the State Party registering the ship stating that the said ship has insurance in force. The certificate shall be in the official language or languages of the issuing State.²⁶ This certificate can only be issued after the owner of the ship submits to the competent authority a ‘Bunker Convention Blue Card’ which will be issued by the insurer providing evidence that the ship is insured and that the insurance meets the requirements of the Bunker Convention. The certificate will be issued in Grenada by the Grenada Port Authority.

Once the certificate is issued, it 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. In the case of ships registered under the flag of Grenada the certificate must be deposited with the Grenada Port Authority, or, if the ship is not registered in a State Party, with the authorities issuing or certifying the certificate.²⁷

The Bunker Convention places responsibility squarely on the shoulders of the State Party to “*not permit a ship under its flag tooperate at any time, unless a certificate has been issued.*”²⁸ It is an obligation on the part of the State Party to ensure that the ship has insurance, the State Party “*shall ensure, under its national law, that insurance or other security... 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*

²⁶ Article 7 (4), Bunker Convention.

²⁷ Article 7(5), Bunker Convention.

²⁸ Article 7(11), Bunker Convention.

an offshore facility in its territorial sea".²⁹ By placing that obligation on the State Party, the Bunker Convention is seeking to eliminate ships that are registered under a State that is not a Party to the said Convention, bypassing the compulsory insurance provision.

Article 7 (15) of the Bunker Convention provides, on accession to the Bunker Convention a State may declare that vessels that operate exclusively within the territorial sea and the exclusive economic zone will be exempted from the requirement for compulsory insurance or financial security. However, it is the intention of the proposed bill that the requirement for compulsory insurance or financial security would be extended to these vessels whether seagoing or solely for coastal navigation. Therefore, under the proposed bill, Grenada will not exercise that right of exemption.

Time Limits:-

Article 8 provides that rights to compensation will be extinguished unless a claim is brought under the Bunker Convention "*within three years from the date when the same occurred. However in no case shall an action be brought more than six years from the date of the incident which caused the damage.*"³⁰ 'Incident' in Article 1(8) is defined as 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.

Further, **Article 8** stipulates that where the incident consists of a series of occurrences, the six-year period shall run from the date of the first such occurrence. The reason for this provision was mainly due to the fact that in certain circumstances oil pollution occurs a considerable time after the incident. Therefore, the drafters of the Bunker Convention considered it a necessity that a final date must be included after which no claims can be brought.³¹

Jurisdiction and Enforcement of Judgments:-

²⁹ Article 7(12), Bunker Convention.

³⁰ Article 6, Bunker Convention.

³¹ M.Jacobsson; *op. cit.*, p. 21 at p. 35.

Articles 9 and 10 of the Bunker Convention highlight the jurisdiction of a State Party, the right of Courts within the jurisdiction of a State Party to enforce judgments and the duty of other State Parties to recognise and enforce a judgment given by a competent court in another State Party, without revisiting the merits of the case.

Article 9 stipulates that the courts of a State Party where the bunker oil spill incident occurred or where preventative measures have been taken, have exclusive jurisdiction over actions for compensation against the shipowner, insurer or any other person providing security for the shipowner's liability. The proposed Bill will give the Supreme Court of Grenada the required jurisdiction over actions brought for compensation for bunker oil pollution damage.

WHY DOES GRENADA NEED THE BUNKER CONVENTION?

Grenada, a signatory to the CLC Protocol 1992 and FUND 1992:-

On 7 January 1999, Grenada ratified the CLC Protocol 1992 and the **International Convention on the Establishment of an International Fund for the Compensation for Oil Pollution Damage** ("FUND 1992"). As a signatory to both the CLC Protocol 1992 and the FUND 1992, any oil pollution damaged caused by a ship carrying oil, compensation for loss suffered is made accessible by both the CLC Protocol 1992 and the FUND 1992 to persons suffering therefrom. However, therein lies the difficulty presented to persons able to make a claim. The ship must have been a designed for the carriage of oil in order for compensation to be payable under the CLC Protocol 1992.

Grenada is a dualist State and, therefore, the ratification of an International Convention would not be effective unless it is incorporated into its municipal laws. Nineteen (19) years after ratifying the FUND 1992 no attempts have been made by the legislative bodies to implement this Convention into its laws. The CLC Protocol 1992 was domesticated into Grenada's national laws in 1998 by way of the **Civil Liability for Oil Pollution Damage (International Convention) Act 1998**. Grenada's jurisprudence is based on the common law system, with our final appellate court being the Privy Council in the United Kingdom.

Advantages of acceding to the Bunker Convention:-

Grenada's main sources of income are tourism, making up 35.2% of Grenada's GDP,³² agriculture and fishing which contributes 1.4% of Grenada's GDP.³³ The fishing sector is an important financial contributor to the rural communities and their existence and livelihood depends on it. Grenada is a major cruise hub, with approximately 246 ships arriving at our shores in 2009.³⁴ On a weekly basis cargo vessels and tankers call at the Port of St. George.

Keeping in mind the percentage that these sectors contribute to Grenada's economy, it is important to accede to the Bunker Convention because in the event of a bunker oil spill, the impact to the socio-economic and environmental sectors and marine safety will be devastating.

The proposed Civil Liability for Bunker Oil Pollution Damage Act will act as a framework for dealing with bunker oil spills and for ensuring that adequate and prompt compensation is available for persons who suffer damage as a result of bunker oil pollution. It will also be useful to provide guidance to the Port Authority of Grenada, the Grenada Maritime Authority, Government of Grenada, the Ministry of Environment and any other emergency response unit, in ensuring that the required stipulations of the Bunker Convention are in place in the event of a bunker oil spill.

It is imperative that Grenada strive to protect its marine environment while at the same time being able to have legislation in place establishing a liability and compensation system in the event of pollution damage from a bunker oil spill. Bunker oil spills are the hardest to clean up from the ocean and coastlines. It is a costly and expensive cleanup

³² <<http://grenadaworld.com/WhyGrenada/tabid/60/Default.aspx>> last accessed on 16 November 2011.

³³ <<http://www.oecd.org/dataoecd/21/31/47250864.pdf>> last accessed on the 16 November 2011.

³⁴ Ibid.

operation and the need to implement the liability and compensation scheme is a crucial necessity, to ensure that shipowners will be held liable and that adequate compensation will be made to persons affected by the bunker oil spill. It is essential that Grenada accedes to the Bunkers Convention and strive to execute domestic law on the liability and compensation for bunker oil pollution.

The implementation of the Bunker Convention into Grenada municipal law will ensure not only our advocacy for safer, secure and cleaner seas but also that a system is in place to compensate persons who will suffer as a result of bunker oil spill within our exclusive economic zone and territorial zone.

The proposed bill will also highlight the requirement for owners of ships with a gross tonnage of 1,000 or more to be insured to cover the shipowners liability, in the event of a bunker oil spill.

Finally, it will provide a framework for the judiciary and judicial officers in Grenada, as it relates to jurisdiction over matters touching and concerning bunker oil spills. Not only does it allow local Courts jurisdiction, to adjudicate over claims for compensation for bunker oil spills within Grenada's territorial seas, but, it extends the recognition and enforceability of any judgment given in Grenada's Courts to other State Parties to the Bunker Convention.

HOW GRENADA RATIFIES AND DOMESTICATES CONVENTIONS:-

The implementation of an international convention after ratification, into Grenada's domestic law can take place in one of two ways. Either the adoption of the international convention into existing legislation by amending the relevant Act to include provisions it did not include before, or if there is no existing legislation, a whole separate piece of legislation would be enacted and passed to reflect the terms of the international convention.

When enacting the Bunker Convention into domestic law, since the period for ratification of the Bunker Convention has expired, Grenada will accede to the Bunker Convention. Once accession is complete, a separate Bill will be drafted for the implementation of the Bunker Convention.

Constitution of Grenada; powers to make laws:-

Section 38 of the **1973 Constitution of Grenada** (“Constitution of Grenada”) gives the Parliament of Grenada the powers to make laws for the peace, order and good governance of Grenada.

Section 45 (1) of the Constitution of Grenada stipulates that the power of Parliament to make laws shall be exercised by Bills passed by the Senate and the House of Representatives. Section 45 (2) goes further stating that when a bill is submitted to the Governor- General for assent in accordance with the provisions of the Constitution, the Governor- General will signify his assent or that he withholds his assent.

Once the Governor- General assents to a Bill that has been submitted to him in accordance with the provisions of the Constitution of Grenada, the Bill shall become law and the Governor- General shall thereupon cause it to be published in the *Gazette* as law.

Procedure:-

After the accession to the Bunker Convention, various stakeholders like the Grenada Maritime Authority and the Port Authority of Grenada will do various consultations with the relevant stakeholders in the shipping industry to get the necessary feedback on the Bunker Convention for the drafting of the Bill. Once the information is collected, a committee representing all the Stakeholders will be set up to draft the Bill in accordance with the Bunker Convention.

The Bill will then be sent to Cabinet to be debated, following which the draft of the Bill will be sent to the office of the legislative drafter with comments and recommendations. The office of the legislative drafter falls under the Department of the Attorney General in the Ministry of Legal Affairs. The office of the legislative drafter is responsible for ensuring that all laws are drafted and sent to Cabinet for its approval before proceeding to Parliament for enactment.

The Bill will then be reviewed by the legislative drafting department. The final draft of the Bill will include any comments and recommendations that may be made thereto by the said department.

The final draft bill will then be sent back to the Cabinet for debate. Following its approval it will be sent to Parliament to be enacted. The Governor- General will then assent to the Bill and the bill will then become an Act. The Act will then be published in the *Gazette*.

The draft bill will be incorporated into Grenada's legislation verbatim as to the provisions set out in the Bunker Convention with a few amendments.

Scheme of the Proposed Draft Bill

Part I will include the short title, the definition section and the provisions stipulating that the Act binds the crown.

Part II will outline the scope of application of the Act applying exclusively to pollution damage caused in the territorial sea and the exclusive economic zone of Grenada.

Part III will stipulate provisions dealing with the liability of the shipowner and part IV will outline the ships excluded from the provisions of the Act.

Part V will examine incidents involving two or more ships and make provisions for the joint and several liabilities of the shipowners of the ships concerned.

Part VI examines the limitations of liability and part VII will deal extensively with the provisions on compulsory insurance or financial security.

Part VII will deal with the time limits under the Act when an action for compensation can be brought and part IX will stipulate which Court in Grenada will have jurisdiction to hear the said actions brought.

Part X will deal with recognition and enforcement of judgements.

Part XI, the transitional provision stipulates the limits of liability pending the accession and enactment of the LLMC Convention.

Part XII outlines when the Act will come into force.

The certificate of insurance or other financial security in respect of civil liability for bunker oil pollution damage will be annexed to the Act.

CIVIL LIABILITY FOR BUNKER
OIL POLLUTION ACT, 2012

CIVIL LIABILITY FOR BUNKER OIL POLLUTION ACT, 2012

Arrangement of Sections

Section

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Preliminary

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Annex I

Certificate of Compulsory Insurance

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

GRENADA

Bill No. of 2012

An Act to make provision to ensure the accessibility of adequate, prompt and effective compensation for damage caused by pollution resulting from the escape or discharge of bunker oil from ships in the territorial sea and exclusive economic zone of Grenada.

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Grenada, and by the authority of the same as follows :-

PART I

Preliminary

1. This Act may be cited as the-

**CIVIL LIABILITY FOR BUNKER OIL POLLUTION
ACT**

Short Title

Definitions

2. In this Act-

"Authority" means the Maritime and Port Authority of Grenada established under the Grenada Port Authority Act Cap. 247;

"Bunker Convention" means the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001;

"State Party" means a State which is a Party to the Bunker Convention;

"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;

"Civil Liability Act" means the Civil Liability for Oil Pollution Damage (International Convention) Act 1998;

"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;

"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;

"person" means any individual or partnership or any public or private body, whether corporate or not;

"Organization" means the International Maritime Organization;

"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;

"preventive measures" means any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage;

"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 the State of Grenada and operated by a company which in Grenada is registered as the ship's operator, "registered owner" shall mean such company;

"Secretary-General" means the Secretary-General of the Organization;

"SDR" means special drawing rights supplementary foreign exchange reserve assets defined and maintained by the International Monetary Fund;

"ship" means any seagoing vessel and seaborne craft, of any type whatsoever;

"ship-owner" means the owner, including the registered owner, bareboat charterer, manager and operator of the ship;

"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. Act binds the Crown

3. Nothing in this Act applies in relation to: -

(a) any occurrence before the date of commencement of this Act; Scope of Application

4. This Act binds the Crown.

PART II

1. This Act shall apply exclusively:
 - a. to pollution damage caused:
 - i. in the territory, including the territorial sea, of Grenada; and
 - ii. in the exclusive economic zone of Grenada, established in accordance with Grenada Territorial Sea and Maritime Boundaries Act 25 of 1989. Liability of the ship-owner
 - b. to preventive measures, wherever taken, to prevent or minimize such damage.

PART III

1. Except as provided in sections 3 and 4 of this part, 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 section 1 of this part, 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 the Government of Grenada or the Authority or any 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 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 Act.
6. No claim for compensation for damages under this Act may be made against:
- a. the servants or agents of the ship-owner or the members of the crew;
 - b. the pilot or any other person who, without being a member of the crew, performs services to the ship;
 - c. any Charterer (howsoever described including a bareboat charterer), manager or operator of the ship;
 - d. any person performing salvage operations with the consent of the ship-owner or on the instructions of a competent public authority;
 - e. any person taking reasonable measures to prevent or minimize the effects of bunker oil pollution;

Exclusions

- f. The servants or agents of persons mentioned in (c) (d) and (e);

Unless the liability in question resulted from their personal act or omission, committed with the intent to cause damage, or recklessly and with knowledge that such damage would probably result.

- 7. Nothing in this Act shall prejudice any right of recourse of the shipowner which exists independently of this Act.

PART IV

Incidents involving two or more ships

- 1. This Act shall not apply to pollution damage as defined in the Civil Liability Act, whether or not compensation is payable in respect of it under that Act.
- 2. Except as provided in section 4 of this part, the provisions of this Act shall not apply to warships, naval auxiliary or other ships owned or operated by:
 - a. The State of Grenada and used, for the time being, only on the Government of Grenada non-commercial service; or
 - b. A State Party to the Bunker Convention used, for the time being, only on the Government of the said State Party non-commercial service.
- 3. With respect to ships owned by Grenada and used for commercial purposes, Grenada shall be subject to suit in the jurisdictions set forth in part IX and shall waive all defences based on its status as a sovereign State.
- 4. With respect to ships owned by a State Party or a State not a party to the Bunker Convention and used for commercial purposes, the State Party or a State not a party to the Bunker Convention, shall be subject to suit in the jurisdictions set forth in part IX and shall waive all defences based on its status as a sovereign State.

Limitations of Liability

Compulsory Insurance or Financial Security

PART V

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

PART VI

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

PART VII

1. The registered owner of a ship having a gross tonnage greater than 1000 registered in Grenada 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 Civil Liability for Oil Pollution Damage (International Convention) Act 1998.
2. A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Act shall be issued to each ship after the Authority has determined that the requirements of section 1 of this part have been complied with. This certificate shall be in the form of the model set out in the annex to this Act 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. The Authority shall issue certificates referred to in section 2 to ships registered in the State of Grenada.
4. The Director of the Authority shall, as a minimum, be authorized to withdraw these certificates if the conditions under which they have been issued are not maintained.
5. The certificate shall be in English.
6. The certificate shall be carried on board the ship and a copy shall be deposited with the Grenada Port Authority.
7. An insurance or other financial security shall not satisfy the requirements of this section 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 section 2 of this part, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in section 5 of this part, unless the certificate has been surrendered to the Authority 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.
8. The Director shall, subject to the provisions of this section, determine the conditions of issue and validity of the certificate.
9. Nothing in this Act shall be construed as preventing the State of Grenada from relying on information obtained from other State Party or the Organization or other international organizations relating to the financial standing of providers of insurance or financial security for the purposes of this Act. In such cases, the State of Grenada relying on such information is not relieved of its responsibility as a State issuing the certificate required by section 2 of this part.
10. Certificates issued or certified under the authority of a State Party shall be accepted by the Authority for the purposes of this Act and shall be regarded by the Authority as having the same force as certificates issued or certified by the Authority even if issued or certified in respect of a ship not

registered in a State Party. The Authority may at any time request consultation with the issuing or certifying State Party should it believe that the insurer or guarantor named in the insurance certificate is not financially capable of meeting the obligations imposed by this Act.

11. 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 ship-owner) which the ship-owner would have been entitled to invoke, including limitation pursuant to part VI. Furthermore, even if the ship-owner is not entitled to limitation of liability according to part VI, 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 section 1 of this part. 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.

Time Limits

Jurisdiction

12. No ship flying the State of Grenada flag shall be permitted to operate at any time, unless a certificate has been issued and is in compliance with the requirements under sections 2 or 13 of this part.

13. No ship wherever registered having a gross tonnage greater than 1000 shall enter or leave any of the ports in Grenada, or arrive at or leave an offshore facility in its territorial sea unless the ship has insurance or any other financial security in force.

Recognition and
Enforcement

14. The provisions of this part shall not be applicable to ships owned by the State of Grenada that do not maintain insurance or other financial security. Ships owned by the State of Grenada shall carry a certificate issued by the Authority stating that the ship is owned by the State of Grenada and that the ship's liability is covered within the limit prescribed in accordance with section 1 of this part. Such a certificate shall follow as closely as possible the model prescribed by section 2 of this part.

15. Any person who contravenes this part is guilty of an offence

and liable-

- a. on conviction on indictment, to a fine not exceeding \$100,000 or imprisonment for a term not exceeding 5 years or both; or
- b. on summary conviction, to a fine not exceeding \$50,000 or imprisonment for a term not exceeding 2 years or both,

Transitional
Provision

and in addition, the Court may order the detention of any vessel in connection with which the offence was committed until the registered owner acquires insurance or financial security.

PART VIII

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

PART IX

1. Where an incident has caused pollution damage in the territory, including the territorial sea, or the exclusive economic zone of Grenada, or preventive measures have been taken to prevent or minimise pollution damage in the territorial sea of Grenada, or the exclusive economic zone, 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 Supreme Courts of Grenada.
2. Reasonable notice of any action taken under section 1 of this part shall be given to each defendant.

Commencement

PART X

1. Any judgment given by a Court with jurisdiction in

- accordance with part IX which is enforceable in the State of origin of the judgment where it is no longer subject to ordinary forms of review, shall be recognized in Grenada except:
- a. where the judgment was obtained by fraud; or
 - b. where the defendant was not given reasonable notice and a fair opportunity to present his or her case.
2. A judgment recognized under section 1 of this part shall be enforceable in Grenada as soon as the formalities required under the Foreign Judgment Act Cap. 113 have been complied with. The formalities shall not permit the merits of the case to be re-opened.

PART XI

1. For the purpose of Part VI and pending the enactment of the said Act referred thereto limitation of any liability incurred under this act shall be regulated in accordance with this Part.
2. The limits of liability for claims for loss or damage caused by bunker oil pollution, arising out of any distinct occasion, shall be calculated as follows:
 - a. 1,000,000 SDR's for a ship with a gross tonnage not exceeding 2,000.
 - b. For a ship with a gross tonnage in excess of 2,000, the following amount in addition to that mentioned in (a) additional aggregate amount:

for each ton from 2,001 to 30,000 tons, 400 SDR;

for each ton from 30,001 to 70,000 tons, 300 SDR;

for each ton in excess of 70,000 tons, 200 SDR.
3. A shipowner shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would

possibly result.

4. The limits of liability determined in accordance with this part shall apply to the aggregate of all claims which arise on any distinct occasion.

PART XII

1. This Act shall come into force on such date as the Minister of Finance may appoint by order published in the Gazette.

Passed by the House of Representatives this _____
day of

_____ of 2012

Clerk to the House of Representatives.

Passed by the Senate this _____ day of _____
of 2012

Clerk to the Senate.

ANNEX 1

**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 if 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 Grenada Port Authority

At
.....
(Place)

On
.....
(Date)

.....
Signature and Title of Issuing or Certifying Official

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