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Overview of Maritime law in Ecuador (including Annex of list of international conventions and local statutes)

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Ecuador is a civil law country traditionally based on statute. The exceptions to this rule are regarding the capacity of the Constitutional Court to issue jurisprudence to be binding generally according to Art. 435, paragraphs 1, 6 and 10. Moreover, the National Court has the duty to generate binding rules of Jurisprudence in case of repeated similar opinions or in case of lack or unclear laws in determined matters. (Constitución del Ecuador 2008).

Anyway, there is no current decision by the Constitutional court or by the judiciary specific to maritime law.

As a tradition, maritime commerce in Ecuador has been regulated according to provisions included in the Code of Commerce and under international conventions in which Ecuador is party. On the other side, maritime law related to state control is based on what is known as the Code of Maritime Police and other regulations in which takes supremely importance the international maritime law in which Ecuador is party.

Internal regulations

Maritime commerce provisions in the *Ecuador Code of Commerce* come mostly from the Napoleonic Code but also from the Spanish code. Codes of Commerce are compendiums of all matters of law related to merchants and their relations. The codification of the law in the 19th century was a trend initiated by the Napoleonic France with the Civil Code, 1804 and later with the Code of Commerce, 1807. Many European countries followed this initiative (Tetley 2002).

The Kingdom of Spain enacted their own Code of Commerce in 1829. The Spanish Code of Commerce 1829 was based by its traditional law through the Ordinances of Bilbao, 1737 (Garteiz-Aurrecoa 2011) but also from the Napoleonic Code of 1807 (Lasso 1998). The Spanish Code included provisions related to maritime law in its Third Book named Maritime Commerce. (Código de Comercio de España 1829)

In the early 19th century another trend was present in South America. In 1809, in Quito begun the first intent of independence from Spain, which failed. Anyway, this promoted the ideal of free countries in the whole region. Therefore, in 1810 Mexico and Colombia gained their independence



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followed by Venezuela in 1811. Ecuador obtained its independence in 1822 and adhered to the Grand Colombia, a country formed by the former colonies of Venezuela and Colombia. The territories that now are part of the Republic of Panama at that moment belonged to Colombia.

Previously, The Grand Colombia on 30 August 1821 approved a Constitution in which it was decided in Art.188 that previous statutes in force were valid aside from those opposed to the new Constitution or the decrees or other statutes enacted by the Government. This decision ratified the law imposed by the Spanish Empire in the former colonies until new law was developed (Constitución Política de la República de Colombia 1821).

In 1830, Ecuador left the Grand Colombia and on 4 November 1831, the new Ecuador Congress adopted the Spanish Code of Commerce 1829 except for Book V related to administration of justice. The adoption of the Spanish Code as a model was the same for many newly born South American countries as Bolivia, Perú, Costa Rica, Paraguay, and several provinces in Argentina. That was the reason the Spanish Code was considered as a Hispanic Code (Abásolo 2009).

Moreover, the first Code of Commerce of Mexico 1854 was mostly inspired by the Spanish Code and the same with the Code of Commerce of Chile 1865 with the difference that it received equal influence from the French Code among other European legislation. (Abásolo 2009).

Meanwhile, upon independence, Ecuador began to introduce its own legislation based on Chilean law. The Supreme Court prepared a bill of a Code of Commerce approved by the National Convention in 1878. In 1882 the President Ignacio de Veintemilla approved the Bill and the first Code of Commerce of Ecuador was enacted (Alterini 2008). This Code of Commerce was superseded by a new one enacted in 1906 by President Eloy Alfaro. Finally, in 1960 Ecuador approved its current Code of Commerce. As in previous codes the third book refers to maritime commerce with no fundamental changes (Código de Comercio 1960).

Besides, in 1945 the *Code of Maritime Police* was enacted. A new codification was approved in 1960 which is the current code with further amendments until today. This is a body of laws that confers judging authority to the Harbour Master and the Jury of Captains to decide in case of maritime incidents. The Harbour Master is an officer of the Ecuador Navy while the Jury of Captains is composed of a panel of five members: the Harbour Master and four members appointed in a case by case basis in a random selection by the local Commander of Ecuadorian Navy. The requirement to be appointed as member is to be a current officer of the Navy or the Merchant Marine of Ecuador. The Jury of Captains is presided by the Harbour Master. (Código de Policía Marítima 1960)

The Code of Maritime Police in Section II concedes to the Harbour Master jurisdiction to decide minor penal offences within his territorial area, and also related to maritime incidents between vessels less than 50 tons. with no loss of human lives. The Jury of Captains has authority to decide all major cases of maritime incidents in which the Harbour Master has no authority to decide.



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Penalties can range from fines to detention. These duties are now in question due to the constitutional changes as it will be explained.

In addition, the Code states in Art. 22 that cases involving ocean-going ships or the death or disappearance of a person need to be consulted to the Military Court. This an organism now extinguished but initially depending from the Ministry of Defence (Código de Policía Marítima 1960).

Be it as it may, recent fundamental changes to the law of Ecuador have impacted the Code of Maritime Police. The Constitution of Ecuador 2008, Art. 168, para. 3 in accordance with the democratic principle of separation of powers states that jurisdiction is only to be exercised by the judiciary. The administration of justice is forbidden to members of other powers (Constitución del Ecuador 2008). The status under the Code of Maritime Police is that the President of the Republic appoints the Harbour Master under request by the Ministry of Defence, and the Jury of Captains is composed by individuals not members of the Judiciary.

Despite, Harbour Masters and Juries of Captains in Ecuador still continue deciding cases. Besides, the Organic Judiciary Code 2009 extinguished the Military Court, originally dependent from the Ministry of Defence, meaning that all appeals and consultations are sent to the National Court of Justice with the outcome of different criteria from said Court. This has impacted appeals and consultation processes.

Anyway, any lawsuit in relation to claims for damages that is a result of marine incidents is to be submitted before a Civil and Commercial law judge as stated in Arts. 239 of the *Organic Judiciary Code*. Ecuador currently does not have maritime courts but there is a provision in Art. 241 of the mentioned Code that allows the Council of the Judiciary to designate judges for specialized matters. (Código Orgánico de la Función Judicial 2009)

Besides, a new Code for Civil Procedure is in force from 2016, the General Organic Procedure Code, also known as COGEP, with fundamental changes from a written system to an adversarial oral system with new developments that affect ways on how complaints and evidence need to be filed and handled, including service of process to defendants, all of that providing impact in the legal scenario. A general principle is that evidence is to be presented or announced in the statement of claim. (COGEP 2015)

International sources of law

Ecuador is party to several international conventions. Some of them are now mentioned.

Basically, in 2012 Ecuador ratified the accession to the *United Nations Convention on the Laws of the Sea (UNCLOS 1982)*, also known as the Constitution for the seas.



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As for the named four pillars of maritime law regulation, Ecuador is party to *The International Convention for the Safety of Life at Sea (SOLAS 1974)* and its 1988 Protocol which relates to minimum safety in relation to construction, equipment and operation of merchant vessels.

Besides, it is party to *the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 (MARPOL 73/78)*, including Annex 1 (oil and oily waters), II (Noxious Liquid Substances Carried in Bulk by tankers), III (Harmful Substances Carried by Sea in Packaged form), IV (Sewage from ships), and V (Garbage from ships), not being party of the Annex VI (air pollution by ships).

In addition, Ecuador is party to *The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW 1978)*, but non party to the 1995 amendments. The same occurs with the STCW-F which was created in relation to fishing vessel personnel.

Finally, Ecuador is not party to *The Maritime Labour Convention MLC 2006* nor to the Work in Fishing Convention 2007. Anyway, in relation to the MLC the Constitutional Court in March 2017 approved its terms. Therefore, the Convention is pending to be approved by the legislature.

In relation to maritime commerce, Ecuador is party to the *International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (The Hague-Visby Rules)*. Multimodal transportation (including transportation by sea) related to consignments to or from the Andean Countries is regulated under Decisions 331 and 393 of the Andean Community.

Previously, as a regional intention to unify the law, several South American countries, signed in 1928 the *Sanchez de Bustamante Code for Private International Law*. Ecuador ratified this Code in 1933 with the reserve that it was accepted in all parts not in opposition to the Constitution and the law. The Code includes in its third title provisions related to maritime commerce (Bustamante Code 1928).

In regard to collisions, Ecuador adhered to the COLREGS - International Regulations for Preventing Collisions at Sea 1972, but not in the case of *The Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels, 1910 (The Brussels collision convention)*.

Concerning arrest of ships and maritime liens Ecuador is party to the *International Convention on Arrest of Ships, 1999*; *The International Convention on Maritime Liens and Mortgages, 1993* and to the Maritime liens and arrest of ships regulations 487 and 532 by the Andean Community.

A list of International conventions that Ecuador is party as well as national statute related to maritime law can be found in Appendix A: Legislation on maritime law in Ecuador.

Appendix A

LEGISLATION ON MARITIME LAW IN ECUADOR

Ecuador is party to international conventions related to maritime law, and due to its membership in the Andean Community formed with Colombia, Peru and Bolivia, there are a number of regulations that are part of the legislation of Ecuador which also has some local statute, as follows:

a. **Brussels Conventions:**

- The International Convention for the unification of certain rules of law relating to Bills of Lading and protocol of signature “Hague Rules 1924”
- Protocol to amend the International Convention for the unification of certain rules of law relating to Bills of Lading “Visby Rules”

b. **IMO conventions:**

- Convention on the International Maritime Organization (IMO CONVENTION 1948);
- International Convention for Civil Liability for oil pollution damage (CLC 1969)
- International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS 1974);
- Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS PROT 1988);
- Convention on the International Regulations for Preventing Collisions at Sea, 1972, as amended (COLREG 1972);
- Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, (MARPOL 73/78);
- Annex III to MARPOL 73/78;
- Annex IV to MARPOL 73/78;
- Annex V to MARPOL 73/78;
- Protocol of 1992 to amend the International Convention on Civil Liability of oil pollution damage, 1969 (CLC Protocol 1992)



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- International Convention relation to the intervention on the high seas in cases of oil pollution casualties, 1969 (Intervention 1969)
- Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for compensation for oil pollution damage (FUND PROT 1992)
- International Convention on Salvage, 1989 (SALVAGE 1989)
- International Convention on Oil Pollution preparedness, response and co-operation 1990 (OPRC 1990)
- Protocol on preparedness, response and co-operation to pollution incidents by hazardous and noxious substances, 2000 (OPRC-HNS 2000)
- Convention for the suppression of unlawful acts against the safety of maritime navigation, 1988 (SUA 1988)
- Protocol for the suppression of unlawful acts against the safety of fixed platforms located on the continental shelf, 1988 (SUA PROTOCOL 1988)
- Convention on Facilitation of International Maritime Traffic, 1965, as amended (FAL 1965);
- International Convention on Load Lines, 1966 (LL 1966);
- Protocol of 1988 relating to the International Convention on Load Lines, 1966, as amended (LLPROT 1988);
- International Convention on Tonnage Measurement of Ships, 1969 (TONNAGE 1969);
- Convention on the International Mobile Satellite Organization, as amended (IMSO C 1976);
- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW 1978);
- International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990, as amended (OPRC 1990);

c. United Nations and United Nations/IMO Conventions:

- United Nations Convention on the Laws of the Sea (UNCLOS 1982)
- International Convention on Maritime Liens and mortgages, 1993

- International Convention on Arrest of Ships, 1999

d. UNESCO Conventions:

- UNESCO Convention on the Protection of the Underwater Cultural Heritage

e. International Labour Organization Conventions:

- Medical Examination (Fishermen) Convention 1959
- Fishermen's Articles of Agreement Convention 1959

f. American Conventions:

- Convention on International Private Law – Code Sanchez de Bustamante, 1928

g. The Andean Community legislation:

- Decision 288, Freedom of access to cargo with origin and destination by sea inside the sub region, 1991
- Decision 314, Freedom of access to cargo transported by sea and policies for the development of the Merchant Marine of the Andean Group, 1992
- Decision 331, related to Multimodal Transport, 1993
- Decision 390, modifications to the Decision 314 related to Freedom of access to cargo transported by sea, 1996
- Decision 393, related to amendment to the regulations for Multimodal Transport, 1996
- Decision 422, Regulations for the common application of the reciprocity principle in the transportation by sea, 1996
- Decision 487, related to Maritime liens and arrest of ships, 2000
- Decision 532, amendment to decision 487 related to Maritime liens and arrest of ships, 2002
- Decision 609, related to common recognition to titles for the seaman

h. National Statute related to Maritime law:

- Code of Commerce, 1960



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- Code of Maritime Police, 1960
- General Statute for Ports, 1970
- Sea and river transportation Statute, 1972
- Oil Terminals Administrative Statute, 1977
- Nacional Port Administration Regime Statute, 1979
- Statute for support to the National Merchant Marine, 1979
- Statute for facilitation of exports and transport by sea, 1992
- Statute for fishing and fishing development, 2005
- Statute for the Special Regime of the Province of Galapagos, 2015