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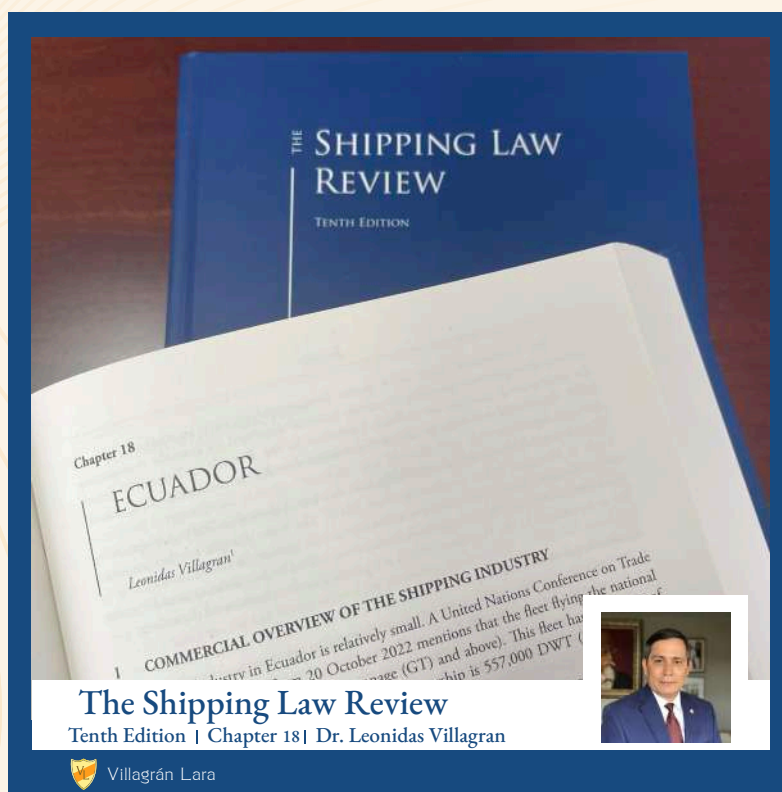
The background of the cover is a photograph of a sunset over the ocean. The sun is a bright, glowing orb on the left side of the horizon, casting a long, shimmering reflection on the water's surface. Several large cargo ships are visible on the horizon line. In the foreground, a sandy beach is visible with several people standing near the water's edge. Some people appear to be handling a small boat or fishing gear. The overall color palette is dominated by warm oranges, yellows, and blues.

SHIPPING LAW
REVIEW
ECUADOR

ECUADOR

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In this special edition we include an authorized reproduction of the Ecuador Chapter of the book Shipping Law Review, tenth edition.



Dr Leonidas Villagran is a senior partner at Villagran Lara. He is a juris doctor, who graduated with distinction from the University of Guayaquil. He holds an LLM in international maritime law with distinction from the World Maritime University, the Lloyd's Maritime Academy prize and LLM in constitutional law from the Espiritu Santo University. He obtained postgraduate diplomas in marine insurance from the World Maritime University and in international trade from the Catholic University of Guayaquil.

Leonidas' practice has been related to international commerce, shipping law and marine insurance for more than 15 years. He is a member of the Shipping and International Trade Committee of the Guayaquil Bar Association and professor of maritime law at the University of the Pacific, UEES Espiritu Santo University and ESPOL University in Guayaquil. He was invited as a researcher and lecturer to the Language and Culture University in Beijing and lectured at Ulacit University in Costa Rica and Metropolitan University in Guayaquil.

Several of his articles are published on the firm's website.

In the public sector, Leonidas has served as senior adviser for the Council of the Judiciary, undersecretary of the Ministry of Government and regional manager for the Ecuador Development Bank.

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THE SHIPPING LAW REVIEW

Leonidas Villagran

ECUADOR

I COMMERCIAL OVERVIEW OF THE SHIPPING INDUSTRY

The shipping industry in Ecuador is relatively small. A United Nations Conference on Trade and Development report of 20 October 2022 mentions that the fleet flying the national flag consists of 145 ships (100 gross tonnage (GT) and above). This fleet has a capacity of 307,000 deadweight tonnage (DWT). Fleet ownership is 557,000 DWT (1,000 GT and above).²

Fishing is carried out using 546 considered industrial fishing vessels.³ The main product is tuna fish. Fisheries exports in 2022 were US\$1,914.026 of which tuna fish was US\$1,270.943, which is more than 6 per cent of total exports.⁴ Artisanal fishing is carried out using around 60,000 ships with 180,000 fishermen.

II GENERAL OVERVIEW OF THE LEGISLATIVE FRAMEWORK

Ecuador is a civil law country that is traditionally based on statute. The exception is regarding the capacity of the Constitutional Court to issue jurisprudence that is generally binding, according to the Constitution and the duty of the National Court to generate binding rules of jurisprudence for repeated and similar judgments or for incomplete or unclear legislation in determined matters.

As a tradition, maritime commerce in Ecuador has been regulated according to provisions included in the Code of Commerce. Conversely, maritime law related to state control is based on the new Navigation Act 2021 that has replaced the Code of Maritime Police. Both of these are complemented by several international conventions in which Ecuador is a party.

The Code of Commerce of Ecuador was traditionally inspired by the Napoleonic Code of Commerce but is also derived from the first Spanish Code. The first Code of Ecuador was enacted in the 19th century followed by two more Codes, but its text regarding maritime commerce was maintained almost intact until 2019 with the enactment of a new Code of Commerce.

Basically, the Commercial Code that entered into effect in 2019 makes fundamental changes in relation to maritime law and updates the regulations according to current universal doctrines; for example, incorporating the international doctrine on collision contained in the Brussels Collision Convention 1910. Ecuador is not a party to this Convention but has introduced its rules into its domestic legislation.

As regards state control, the Navigation Act was approved in 2021 and replaces the Code of Maritime Police (originating from 1945). The main changes are the recognition of the Ecuador Navy as the maritime authority and an increase in the amount of fines for maritime infractions. The Navigation Act submits several of its provisions to a regulation that was enacted by the President of the Republic by decree published in the Official Gazette on 30 June 2023.

¹Leonidas Villagran is a senior partner at Villagran Lara. Special appreciation to Evelyn Garcia, who is an associate at Villagran Lara, for her assistance.

²<https://unctadstat.unctad.org/CountryProfile/MaritimeProfile/en-GB/218/index.html>

³https://srp.produccion.gob.ec/registro-nacional-de-embarcaciones/registro-de-embarcaciones-pesqueras-industriales/?tex_tipo_embarcacion=industrial&pageNumber=46

⁴<https://camarapesqueria.ec/wp-content/uploads/2023/02/EXPORTACIONES-PESQUERAS-DIC-2022.pdf>

- International sources of law

From 2012, Ecuador has been a party to the United Nations Convention on the Laws of the Sea (UNCLOS 1982). As regards the four pillars of maritime law regulatory regime, Ecuador is party to the International Convention for the Safety of Life at Sea (SOLAS, 1974, as amended), and also to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW, 1978).

Furthermore, it is involved in the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) to the following:

Annex I (oil and oily waters);

Annex II (noxious liquid substances carried in bulk by tankers);

Annex III (harmful substances carried by sea in packaged form);

Annex IV (sewage from ships); and

Annex V (garbage from ships).

Ecuador is not party to **Annex VI** (air pollution by ships).

Maritime Labour Convention (MLC 96) was currently approved in 2022 by the legislature. The Convention is pending to be approved by the President of the Republic.

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

In respect of the law of collision, Ecuador adhered to the COLREGS - International Regulations for Preventing Collisions at Sea 1972, but not to the Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels (the Brussels Collision Convention, 1910). Nevertheless, the Code of Commerce 2019 is in line with the principles of the Brussels Collision Convention, 1910.

Regarding the 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.

Additionally, Ecuador is party to the International Convention on Salvage, 1989. The Code of Commerce 2019 is in line with the principles of this Convention.



Visit to Admiral Eduardo Navas, Undersecretary of Maritime Transportation.



With Admiral Miguel Cordova, National Director of DIRNEA, the maritime authority.



With members of the Jury of Captains in relation to the Cisne Branco case, with Commander Guillermo Granja, former Harbour Master of Guayaquil; Commander Patricia Palacios, legal head of the Harbour Master office; attorney Fabricio Guerrero, advisor of the Harbour Master; attorney Danilo Ycaza.

III FORUM AND JURISDICTION

I Courts

Currently, Ecuador does not have maritime courts. Transportation of goods via sea is considered a commercial activity. Therefore, any lawsuits that involve claims regarding maritime transportation are to be heard by a civil and commercial judge. This is the same for claims in delict.

Moreover, claims regarding labour relations are to be heard by labour judges. In a marine incident involving death, injury to crew or third parties, or pollution, a prosecutor may intervene to determine potential felonies.

In relation to civil and labour claims, the procedure in court is to be followed according to the General Organic Procedure Code, 2016. This Code stipulates that, as a general rule, the plaintiff needs to present his or her evidence to the court. This rule provides exceptions to allow the plaintiff to present either evidence that has been contested by the defendant or new evidence, the existence of which he or she was not aware.

According to the Code of Commerce, 2019, if a lawsuit is filed against a shipowner whose domicile is outside Ecuador, it is possible to execute the service through his or her agent.

Prescription terms may apply in the following circumstances:

- a) Environmental damages: there is no prescription term. There is a rule in the Ecuador Constitution that states that there is no time bar – no prescription – for actions regarding pollution;
- b) Payment of freight or demurrage: the prescription term is one year;
- c) Declaration of general average: the term is six months;
- d) Recovery of general average contribution: the term is one year;
- e) Cargo claims under a bill of lading (BL): the prescription term is one year, which is in line with The Hague Visby Rules;
- f) Collision: the prescription time is two years. However, if the ship could not be detained or sued while in national waters, the term is three years. This is in line with the Brussels Collision Convention, 1910;

- g) Claims for damages in delict by non-passengers (injury, death and damage to property), the term is four years, according to the general rules of prescription in the Civil Code; and
- h) cargo claims in international multimodal transportation to or from a port member of the Andean Community: the prescription term is nine months.

According to procedural law, the general rule is that the interruption of prescription is when the complaint has been served. There is an exception to this rule meaning that if the lawsuit is effectively served at least six months from the date of its filing, the prescription term is interrupted from the moment the complaint was filed.

The Code of Commerce states that prescription terms for merchants are to be counted from the date on which those actions or rights are able to be enforced. This appears to be related to the *dies a quo* principle.

A prescription term can be suspended if the person who is to benefit from that term provides his or her consent. Courts are not allowed to extend prescription limits.

Terms of extinctive prescription are suspended in favour of minors (under 18), as stated in Articles 2420 and 2409 of the Civil Code, according to the doctrine of *contra non valentem*. This may not be usual in cargo claims but is very common for death-related claims.

Finally, according to a regulation related to the Mediation and Arbitration Act, the filing of a mediation request interrupts prescription. Terms are to be counted again when the mediation process ends.

II Arbitration and ADR

There are several arbitration and mediation centres primarily under the auspices of the Commercial Chambers. Nevertheless, maritime cases in local arbitration are rare.

Parties are allowed to agree arbitration instead of ordinary courts. A clause containing the agreement can be inserted into the original contract or arbitration can be agreed upon when the dispute is raised. Normally, the parties agree which arbitration centre will hear the case.

Governmental entities are allowed to submit their differences to international arbitration but with the previous authorisation of the Attorney General's Office.

III Enforcement of foreign judgments and arbitral awards

The procedure of recognition of foreign judgments is stated in the General Code of Procedure (COGEP). The process of recognition or homologation is carried out by a panel of judges. This panel has to verify compliance with external formalities, so as to confirm that the decision is final and that the serving of process has been fulfilled.

The process includes the notification to the defendant who is able to file an opposition in five days. After all considerations have been made, the judges issue their final decision.

In regard to foreign arbitral awards, the Mediation and Arbitration Act states that the execution of international awards is to be the same as local arbitral awards, meaning that authority rests on a civil judge of the domicile of the defendants or where the goods are located.

A decree by the President of the Republic regarding a regulation of the Mediation and Arbitration Act confirms that the enforcement of an international arbitration award does not require homologation. A certified copy of the award is the only requirement. Nevertheless, according to Ecuadorian law, the decision may be

required to be duly legalised or apostilled.

The defendants are able to oppose the petition if it provides evidence of compliance of claimed obligation, the suspension of the award or any declaration that the award is void.

Additionally, Ecuador is party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.



At the Brazil embassy in Quito with Commander Marcelo Augusto Texeira, naval attaché and Commander Marcos Taylor, participating Telmo Valencia.

IV SHIPPING CONTRACTS

I Shipbuilding

Shipbuilding contracts can be considered to be service agreements or sale agreements depending on which party has to provide the main materials. If those materials are provided by the party that orders the work, then the title of the vessel in construction belongs to the shipowner.

In contrast, if the materials are provided by the shipbuilder, then the legal relation is to be considered as a contract of sale. Moreover, in a contract of sale, title passes to the buyer when the public deed is executed, normally before a notary public and registered before the harbour master. Notably, registration is mandatory and is evidence of the transfer of property of vessels.

It is possible for parties in a shipbuilding contract to decide when the title will be transferred but the transfer always needs to be executed by public deed. The exception to this rule is related to vessels with no more than 10 gross registered tonnes (GRT); in this case, it is only necessary to have the signatures legalised.

The entity that pays in advance for shipbuilding purposes may request a guarantee being issued by a financial institution to assure a refund of payments. Therefore, the financial institution will issue a guarantee in the form of a letter of credit or guarantee of contractual compliance. Notably, the wording of the guarantee takes supreme importance.

In that sense, it is recommended that the guarantee to be provided is unconditional, contemplates automatic renovation at the sole request of the beneficiary and with the commitment of immediate payment upon declaration by the beneficiary of non compliance by the shipbuilder.

If the shipbuilder has not delivered the vessel according to the terms of the contract, the buyer is able to file a claim requesting termination of the contract or compliance with the agreement, with compensation of damages.

Additionally, the builder holds a lien against the subject vessel for non compliance of payments by the buyer in relation to the contract.

II Contracts of carriage

The Code of Commerce, 2019 is the key legislation regarding contracts of carriage. Furthermore, Ecuador is party to the Hague-Visby Rules but not party to the SDR Protocol. Owing to Ecuador membership in the Andean Community, multimodal transportation is under the Community rules. This rule is valid for all transportation from or to member countries.

The Code of Commerce, 2019 states that all contracts of carriage related to cargo are to be subject to its provisions, disregarding the nationality of the ship, the carriers, the shipper or consignee, if:

- a) The port for loading or unloading is situated in Ecuador;
- b) The BL or any other document that provides evidence of the contract of carriage states that it is subject to Ecuadorian law; and
- c) One of the unloading ports stated in the contract of carriage is the effective unloading port and is situated inside Ecuador.

Notably, charter parties are not under this regulation. However, when a BL is issued in compliance of a charter party then the regulations will be applied to that BL if it regulates the relationship between the carrier and the holder of the BL who is not the charterer.

Cabotage is reserved only for vessels that fly the Ecuadorian flag. Nevertheless, foreign vessels are allowed to be considered as Ecuadorians if they are brought under a bareboat charter. Ecuadorian law allows for bareboat charter registration. This provides special benefits for the charterer that includes the possibility of operating with the Ecuadorian flag, cabotage and tax exemptions. The general rule is that the vessel must comply by having at least 70 per cent of the crew as locals, and other obligations of a national vessel. According to a regulation on safe manning, the master is allowed to be a foreign national.

In regard to the transportation of hydrocarbons, there is a provision in the law that states that this is only reserved to Ecuadorian-owned corporations or to those cojoined by the state with a participation of at least 51 per cent. Currently, the transportation of hydrocarbons is conducted through the state-owned corporation FLOPEC.

III Cargo claims

The general rule is that the lawful holder of the BL has title to sue. However, other cargo interests are able to file lawsuits in delict for any alleged damages. Notably, insurers are able to exercise subrogation actions.

In regard to demise clauses, the Code of Commerce, 2019 includes a provision in Article 1019 stating that the carrier executing the BL is liable. It is possible to agree that a performing carrier will take care of the transport and that the liability is imposed on the performing carrier. Nevertheless, such a provision is ambiguous.

Generally, liability can be determined by way of statute or the contract. For example, if cargo damage is a result of defective stowage in the vessel then the Code of Commerce, 2019 would be invoked due to the provision that assigns the master as responsible for supervising proper stowage.

Additionally, in regard to contracts of carriage by sea, the Code of Commerce, 2019 recognises that parties are able to opt for arbitration by means of a previous agreement. If this is not the case, the Code provides specific rules of jurisdiction, which state that the tribunals that have the authority to decide are as follows:

- a) those that have the main business or residency as the defendant;

- b) those that are in the place of execution of the contract if this is the place where the defendant has an office, branch or agency;
- c) those that are in the same the place of loading or unloading of the subject cargo; and
- d) those that are designated in any other place as stated in the contract of carriage by sea.

Moreover, the action is able to be initiated before the judges of the Ecuadorian port in which the ship or a sister ship was arrested.

IV Limitation of liability

Ecuador is not party to the Convention on Limitation of Liability for Maritime Claims, 1976. The Code of Commerce, 2019 includes provisions in regard to the limitation of liability for carriers; however, these provisions only rely on Andean Community law and international conventions to which Ecuador is party. Currently, there is no community regulation with the exception of specific limitations determined for multimodal transportation.

In relation to international conventions that include specific regimes for limitation of liabilities, Ecuador is party to the Hague-Visby Rules and the International Convention on Civil Liability for Oil Pollution Damage, 1992.

In regard to death or permanent incapacity to passengers, the Code of Commerce, 2019 states a compensation of US\$45,000. Furthermore, for injuries, the value of compensation is to be determined but with the same maximum amount; however, affected passengers are still able to initiate legal actions to be compensated according to what they consider appropriate.

Moreover, there is a general rule that limitation of liability is not to be invoked when the loss is as a result of malice or with knowledge that such damage would probably result.



Participating in the 2022 International Group Correspondents Conference in London with Jessica Cisneros, VL Senior Partner.

V REMEDIES

I Ship arrest

Ecuador is party to the Arrest Convention, 1999. Furthermore, Decision No. 487 of the Andean Community regulates arrest in line with this Convention.

A request to arrest a ship must be based on a maritime claim. For a definition of what a maritime claim is the Code of Commerce submits to community law and international conventions to which Ecuador is party.

Therefore, the International Convention on Arrest of Ships, 1999 and the Andean Community Decision No. 487 are to be applied. Basically, both are similar in terms of provisions regarding the arrest of ships.

Sister ships can be arrested in Ecuador. In contrast, Ecuadorian law does not provide this possibility for associated ships.

Filing of an arrest petition requires evidence of representation of the party asking for the arrest. This means original or certified copy of a power of attorney duly translated when applicable and legalised or apostilled if it is issued in a foreign country.

II Court orders for sale of a vessel

The judicial sale of a vessel can be requested upon a final judgment and also as an execution of a mortgage due to non payment. Once the petition is filed, the vessel has to be officially seized and the seizure needs to be registered in the harbour master's office.

Therefore, the judge will require the vessel to be appraised by a judicial expert. Parties are able to challenge the appraisal report in a hearing. After this, the judge decides the date for the auction, which is to be conducted via the official website of the judiciary.

Once offers have been submitted, the judge will call for a hearing to determine the best offer to be awarded. The judge will provide his decision which will be considered as a title to be registered in the harbour master's office.

A judicial sale of a vessel in a foreign jurisdiction would be recognised by maritime authorities but a previous homologation will be needed before the Ecuador judiciary.



With the technical team in Galapagos for a wreck removal. Eduardo Cisneros, environmental advisor; Diana Proaño, VL of counsel; Eric Crabtree from Brookes Bell; Alvaro Moreano, coordinator.

VI REGULATION

I Safety

In regard to the safety regime, Ecuador is party to the SOLAS Convention. Currently, the control of compliance with the Convention is under DIRNEA, an agency of the Ecuador army, as maritime authority.

The Navigation Act is a recent statute of 2021 with the objective of guaranteeing safety in navigation. The Act includes the creation of the National Maritime Organisation composed of several ministries presided by the Minister of Defence. One of its main duties is related to safety. Therefore, it is expected that further regulations will set up a clear safety regime for the maritime sector.

II Port state control

The Ecuador Navigation Act, 2021 provides full authority regarding coastal, flag and port state control to the Navy and its agency – DIRNEA.

Ecuador is party to the Latin American MOU, the Latin American Agreement on Port State Control of Vessels also known as the Viña del Mar Agreement.

A vessel can be detained as a result of a port state control inspection. Inspections are usually based on documents and certifications to verify the normal condition of the ship, her equipment and crew. The maritime authority is able to execute specific inspections on site.

III Registration and classification

Any person or entity is able to own and register a vessel as long as they have full capacity to act or to be represented. Furthermore, shipbuilding contracts can be registered. Registration is to be done before the harbour master's office.

For the registration of vessels built outside Ecuador, the interested party needs to file a petition, providing evidence of ownership, classification documents and proof that the previous vessel registration was cancelled. In addition, documents that accredit that the ship was cleared in customs are required.

If the vessel is built in Ecuador and this is the first registration, then the interested party needs to provide evidence that the construction plans were approved by the DIRNEA along with classification documents and ownership evidence.

According to several regulations, certifications by classification societies that are members of the International Association of Classification Societies (IACS) are accepted in Ecuador. Moreover, any other IACS non-member classification society needs to be registered before the National Maritime Authority.

Under general principles of Ecuador's civil law, a classification society can be held liable; for example, if a certification has been issued by negligent actions or omissions.



In a visit to the IMO in London with, Permanent Representative now Coastguard Commander CPNV-EMC Boris Rodas.

IV Environmental regulation

The Constitution of Ecuador states the following basic pillars in regard to pollution liability:

- a) strict liability; and
- b) no time bar for claims and enforcement related to pollution damages.

Moreover, Ecuador is party to the CLC Convention, and therefore there is direct action against liability insurers in regard to sea pollution-related claims but also to the limitation of liability as stated in the CLC Convention.

The Environmental Code, 2017 and several related regulations state the procedure in cases of marine pollution. Therefore, if pollution comes from a ship or a maritime terminal, the environmental authority has to be immediately notified and an urgent response plan needs to be implemented or produced with verification of the damages. Lack of notification or compliance entitles the environmental authority to impose huge fines. Remediation and compensation for damages are mandatory.

Pollution incidents in the sea are monitored by the maritime authority through DIRNEA. In a pollution incident, the Ministry of Environment may file a denouncement before the prosecutor to determine potential felonies. Moreover, the prosecutor is able to open an investigation even without a denouncement.

Therefore, the prosecutor may investigate potential felonies. Related felonies appear in the Penal Integral Code and include:

pollution in the seas with a penalty of imprisonment from three to five years (Article 251);

air pollution with a penalty of one to three years (Article 253); and

criminal liability of entities with these penalties according to the infringement: fines from US\$45,000 to US\$225,000, temporal closure and remediation of environmental damages (Article 258).

V Collisions, salvage and wrecks

- Collisions

Ecuador is not party to the Brussels Collision Convention, 1910 but most of its principles have been introduced in the new Code of Commerce, 2019 regarding apportion of liabilities according to the degree of fault, time bar (prescription) and the non-existence of legal presumptions of fault, valid also for internal waters.

- Salvage

There is no mandatory local form of salvage agreement, but the Lloyd's standard form is normally used for international vessels. For some incidents involving towage services, confusion may arise if the service is merely a towage service or a salvage operation, thus involving discussions on the amount of fees. Certain towage services have specific rates determined by port authorities.

Salvage operations are regulated under the Navigation Act, 2021 and the Code of Commerce, 2019.

The Navigation Act states that no salvage operation has to be exercised without the consent of the master or shipowner according to the principles of international maritime law. Furthermore, operation that is related to salvage needs to be authorised by the harbour master and failure to comply is a breach of the law that would result in a fine.

The Code of Commerce, 2019 regulations are basically under the principles and rules of the International Convention on Salvage, 1989.

- Wreck removal

Wreck removal orders are primarily based on environmental law. The Ecuador Constitution has included the strict liability principle for pollution incidents. Therefore, the shipowner is obliged to minimise or prevent pollution that may come from wrecks. Ecuador is not party to the Nairobi International Convention on the Removal of Wrecks, 2007.

- Recycling

Ship recycling is regulated under a resolution of 9 January 2014, issued by the Undersecretariat of Maritime Transportation of the Ministry of Transportation.

VI Passengers' rights

The Code of Commerce provides the main rules in regard to passengers' rights. Some of these rules are outlined below:

- a) in cases of force majeure regarding injuries to passengers or damage to luggage, the carrier is free from liability. However, the carrier is obliged to have insurance for these potential incidents;
- b) claim for loss or damage to the luggage will include the loss resulting from non delivery of the luggage in a reasonable time unless the delay was caused by force majeure;
- c) if a trip is cancelled, the passenger has the right to be reimbursed and to claim damages unless the cancellation is a result of force majeure;
- d) in cases of delay in sailing or arriving to the port of destination, the passenger is able to terminate the contract and request reimbursement and damages unless the carrier proves that it is not responsible for the delay;
- e) when the trip is interrupted temporarily, the passenger will have the right to accommodation and food with no supplementary payment, without prejudice to request termination of the contract and reimbursement. If the trip is interrupted permanently, the carrier will indemnify the passenger; and
- f) in cases of death or injuries to the passenger or loss of or damage to the luggage, the carrier will be liable if death, injury, loss or damage are a result of guilt or negligence by the carrier or its servants or agents.
- g) Passengers's rights stated in the Code of Commerce 2019 are not possible to be waived. Any stipulation in breach of this principle is considered not valid.

VII Seafarers' rights

The MLC2006 ratification is in process. The legislature on January 2022 approved its terms and has passed it to the President of the Republic. Once accepted the MLC will be part of Ecuadorian law.

Certain fundamental rights related to the MLC are already recognised by the Constitution of Ecuador, such as freedom of association and unions, the equal pay principle, the right to an adequate work place, non-discrimination, non-forced labour and the eradication of child labour.

VII OUTLOOK

There have been important developments in the shipping industry, both commercial and regulatory, in the past years. The new Code of Commerce, 2019 provides a new set of updated rules regarding maritime law, such as contracts of carriage, charters, collisions and salvage, putting these laws in line with international principles of law. Notably, before this new Code of Commerce, the law regarding maritime commerce retained 19th century concepts. Even when the Code is not perfect, it provides a better degree of certainty for the parties involved.

The new Navigation Act resolves an old discussion on which institution must lead. Former decrees divided the authority between the Ministry of Transportation and the Army, thus generating confusion in the public. Presently, the Navigation Act states that the Army through DIRNEA is the entity that leads the maritime regulatory regime, also known as the maritime authority. Therefore, this new Act also provides more certainty. The regulation of the Act was published on 30 June 2023. Nevertheless, there are certain provisions that still need to be reviewed.

Amendments are recent and therefore there are no developments regarding decisions made by the National Court. Nevertheless, on 30 March 2021, the Jury of Captains of Guayaquil began deciding collision cases using the apportionment of liabilities principle with the Meridian case, No. 008-2019. Previously, the jury only decided to blame both parties with no mention of percentages using the doctrine of divided damages. The change in the Code of Commerce adopts the apportionment principle, which provides a new way of deciding administrative cases.



Maritime Law Students at the Pacifico University



Visit to a Port with maritime law UEES University students



with ESPOL University students

ECUADOR : LEGISLATION RELATED TO SHIPPING LAW

Updated September 2023

Leonidas Villagran

Ecuador is party to several international conventions related to shipping law, and due to its membership in the Andean Community with Colombia, Peru and Bolivia, there are a number of regulations that are part of the legislation of Ecuador along with some local statutes, 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 1968 “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)
- 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
- Maritime Labour Convention, 2006 (approved by The Legislature, pending to be ratified by the President)

f. American Conventions:

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

g. The Andean Community legislation:

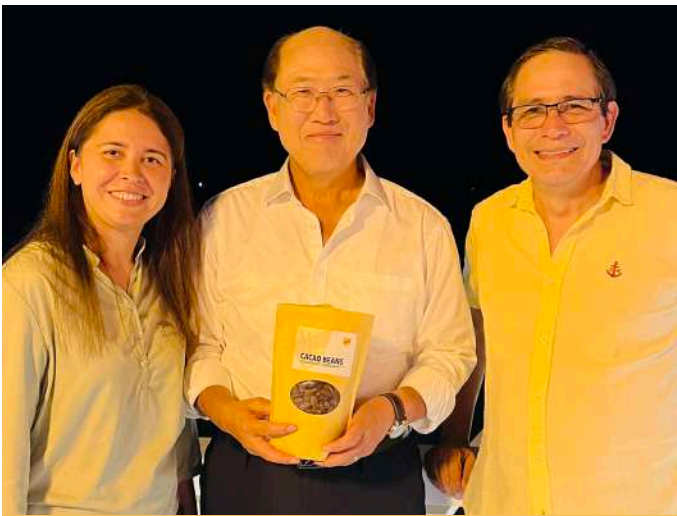
- Decision 288, Freedom of access to cargo with origin and destination by sea inside the sub region, 1991
- Decision 314, Freedom of access to cargo transported by sea and policies for the development of the Merchant Marine of the Andean Group, 1992
- Decision 331, related to Multimodal Transport, 1993
- 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 shipping law:

- Navigation Act, 2021
- Statute for aquaculture and fishing, 2020

- Code of Commerce, 2019
- Statute for the Special Regime of the Province of Galapagos, 2015
- Statute for facilitation of exports and transport by sea, 1992
- Nacional Port Administration Regime Statute, 1979
- Statute for support to the National Merchant Marine, 1979
- Oil Terminals Administrative Statute, 1977
- Sea and river transportation Statute, 1972
- General Statute for Ports, 1970

Galapagos Visit of IMO Secretary General to Galapagos



In Galapagos participating in the delegation to receive the IMO Secretary General Mr. Kitack Lim, with Evelyn García VL Senior Associate.



Sharing moments in the Galapagos: Maria Belen Bolaños, Evelyn García, Kitack Lim, Daniel Bolaños, Liya Dominic and Leonidas Villagran



Dany Rueda, Director of the Galapagos National Park; CPMG Javier Alvarado, Harbour Master of Puerto Ayora; CPNV Patricio Rivas, Regional Director of Dirnea, CPMG Xavier Rubio; Kitack Lim, OMI Secretary General; Adm. John Merlo, General Commander of the Navy; Schubert Lombeida, President of the Galapagos government council; Adm. Miguel Cordova, National Director of Dirnea.

我们的服务目标



Senior Partner Hector Villagran signing a MOU for mutual cooperation with Chinese Law firm DeHeng, Beijing, China.

VL attorneys是厄瓜多尔领先的律师事务所，我们是海商法，移民法，商业法和民法方面的专家，并与世界各地的律师事务所建立了合作伙伴关系。

考虑到海上事故发生的可能性，我们提供 24/7 全天候服务。我们的使命是为客户提供最好的服务，提出合理建议，并在必要时为客户提供力所能及的帮助。

多年来，我们与中国公司、保赔协会及其他组织持续展开合作，帮助他们在厄瓜多尔开展业务，促进两国之间的海事和商业关系。

我们所合作的中国公司和律师事务所如下：

- 中国船东互保协会
- 招金矿业股份有限公司
- 中村建设有限公司
- 三一重工股份有限公司
- 中国远洋运输有限公司
- 中国路桥工程有限责任公司
- 中国港湾工程有限责任公司
- 德恒律师事务所

Registration of foreign reinsurers in Ecuador

On February 2023, the insurance authority issued a new regulation regarding registration of foreign reinsurers with focus on those companies that are not domiciled in Ecuador but with interest to do business with local insurance companies.

Main requirements are as follows:

- Updated international credit rating
- Certification of risks accepted in Ecuador during the last year
- License to operate issued by the financial authority in HQ
- Audited financial statements for last 3 years
- PoA for a representative in Ecuador (not related to local insurers or brokers)

As usual, all foreign documents need to be legalized or apostilled. The registration is for one year to be renewed periodically.

VL promoted the creation of YoungShip Ecuador as a branch of the main organization with headquarters in Norway. Moreover, is one of the major contributors of the events organized by this association. YoungShip Ecuador is currently composed by more than 100 people.



VL associate Michael Paredes is member of YoungShip



Participating in the World Clean up day.



YoungShip Ecuador in Galapagos with the IMO Secretary General.



A dinner of YoungShip Ecuador members.



YoungShip Ecuador meeting at ESPOL University

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