

Special Edition
2026



VILLAGRÁN LARA
attorneys



Ecuador Tightens Port
Security (page 8)

In-Depth Shipping Law
Ecuador (page 10)



The Shipping Ecuador magazine is a publication created to share practical knowledge, professional experience, and current developments in the maritime sector in Ecuador.

Through this magazine, we present updated regulatory frameworks, technical insights, and industry trends that affect shipowners, operators, insurers, authorities, and maritime professionals.

Power Marítima and Villagrán Lara Attorneys join efforts in this edition to contribute their expertise in inspections, maritime law, insurance, and risk management, promoting best practices, regulatory compliance, and legal certainty in maritime activities.

Our objective is to provide clear, useful, and reliable information that supports decisionmaking, strengthens professional standards, and encourages responsible maritime operations.

We hope this edition serves as a valuable reference for lawyers, surveyors, operators, students, and all members of the maritime community.



Andres Vasconez and Ligia Condoy of Power Marítima and Leonidas Villagrán and Jessica Cisneros of Villagrán Lara Attorneys



Power Maritima is a leading force in maritime inspection and consultancy since 1989. We are dedicated to ensuring the safety and efficiency of national and international flag vessels. Our team of highly trained inspectors, including Master Mariners and Chief Engineers, brings extensive knowledge and understanding of the maritime field, delivering unparalleled service both locally and globally.

We have a deep understanding of local conditions, traditions, and business practices, allowing us to build strong relationships with leading local and international companies in the maritime industry. This extensive network makes us a trusted correspondent for P&I Clubs, ensuring the highest standards of quality and efficiency in our services. We remain committed to strengthening these relationships and upholding our reputation as a benchmark in the sector.

OUR MISSION

Prevent financial losses to our customers, resulting from incorrect advising due to delay, damage or loss. Benefit our clients from our extensive expertise in business, law and technical knowledge, striving to meet all our customers requirements in the marine industry in every service provided.

OUR TEAM OF EXPERTS

We have a team of highly trained and experienced inspectors, including Master Mariners and Chief Engineers, who bring their extensive knowledge and understanding of the maritime field



Rafael Diaz-Oquendo Vice President, Regional Manager at Thomas Miller and Ligia Condoy of Power Maritima



Power Maritima team visited London, England to attend IGP&I CORRESPONDENTS CONFERENCE



OUR SERVICES

CORRESPONDENT SERVICES FOR:

- Gard AS.
- Ms Amlin
- Shipowners
- West of England
- tHydor
- Skuld
- Charterama
- UK P&I
- China P&I

CARGO INSPECTIONS

- DraftSurvey
- Condition of Bulk / Dry cargo
- Lashing / securing of general containerized cargoes
- Supervision of loading and discharging of cargoes
- Hatch sealing/unsealing
- Advice for cargo damage claims/shortage
- Cargo claims settling
- Investigation of shortage and contaminated dry — bulk cargoes

CONDITION SURVEYS

Hull & Machinery, P&I, Pre - Purchase Condition for:

- Fishing vessel
- Yacht / Passenger Vessels
- General cargo
- Reefer container
- Oil / Chemical / Gas Tankers

DAMAGE

- Investigation of damage / loss of cargo
- Adjustments of claims (damage or loss of vessel/cargo)
- Stevedoring damage inspection
- Damage condition of vessels hull & machinery
- Pier damage inspections

OTHERS

- Underwater Surveys using ROV
- Bollard Pull
- Ultrasonic Weathertightness test
- Ullage Survey
- Off Hire / On Hire Bunker Surveys



Power Maritima participated in the Alsum Congress in Santiago de Chile, Chile



Power Maritima team and Villagrán Lara Attorneys team meeting with officers of the Galapagos National Park



Power Maritima inspector assessing the general condition of a fishing vessel



Ricardo Miqueo of Forte and Ligia Condoy at an insurancefocussed event in Galapagos



GONZALO VASCONEZ (†) Co-Founder of Power Maritima



Power Maritima Principal Surveyor performed a Bollard Pull Test in Guayaquil, Ecuador.



Power Maritima continue to strengthen their professional capabilities through specialised training delivered by Master Mariner Capt. Shaw



Andres Vasconez CEO/ Principal Surveyor of Power Maritima



Ligia Condoy, Capt. Eduardo Orejuela and Angelica Granizo of Momentum



Excelent meeting with Dirnea officers, the Ecuador maritime authority, to discuss about academic topics



Permanent training with the Villagran Lara Attorneys team



Leonidas Villagran of Villagran Lara Attorneys happy to contribute with pro bono services to the Galapagos National Park and Fundacion Jocotoco



Our attorney Michael Paredes alongside the Director of Ports, Attorney Rafaela González.



Michael Paredes, Cristina Quinteros and Yaritza Lopez legal team of Villagrán Lara Attorneys analysing a case



Yaritza Lopez and Commander Wilson Cordova, at the National Directorate of Aquatic Spaces



Commander Jorge Duran, Harbour Master of Guayaquil; Diana Proaño, VL Of Counsel; Admiral Ricardo Uda, General Commander of the Navy and Jessica Cisneros, VL Senior Partner



Leonidas Villagran during an insurance-focused event in Galapagos, addressing risk management strategies and solutions.



VILLAGRÁN LARA
attorneys

Villagrán Lara Attorneys is a professional organization of attorneys in Ecuador focused in the business world and dealing in complex matters. Our members are experienced professionals with first class academic knowledge. The firm objective is to contribute with effective legal solutions to fit the needs of our clients, under a scheme of quality and personalized services.

MARITIME LAW & MARINE INSURANCE

Our Maritime law division assists our clients in regard to any maritime incident in a 24/7 basis. We support entities such as P&I Clubs, insurance companies for assessment of liabilities, claims handling, conflict resolution or prevention, Litigation on Charters parties and bills of lading, cargo claims, subrogation claims, arrest and release of ships, investigations by Harbour Masters and by prosecutors in regard to pollution.

A LIST OF INSURANCE PROVIDERS WE HAVE WORKED WITH:

- BRITISH MARINE
- BRITANNIA P&I
- CHINA P&I CLUB
- GARD
- HYDOR
- INGOSSTRAKH
- JAPAN P&I CLUB
- MSIG SPECIALTY MARINE
- NORTHSTANDARD
- NORWEGIAN HULL CLUB
- SKULD
- VHT
- WEST
- SHIPOWNERS
- STEAMSHIP MUTUAL
- SUNDERLAND
- SWEDISH CLUB
- THE MECO GROUP
- THOMAS MILLER
- UK P&I



Roberto Salazar, Leonidas Villagran, admiral Eduardo Navas and Romulo Donoso at a conference organized by The Ecuador official Maritime Academy ESMENA

TYPE OF CASES WE HAVE WORKED ON



Motor tanker. Crude oil spill, about 2,000 barrels in Esmeraldas



People Claims



Torpedo Attached to Hull



Cargo Claim involving Steel Coils



Cargo Claim Involving Ammonium Sulfate



Galapagos Fire and Wreck Removal



Grounding in Los Gales: General Average & Salvage

ECUADOR TIGHTENS PORT SECURITY

Melanie Arechua
Naval Engineer, Power Maritima

STRENGTHENING PORT SECURITY IN ECUADOR AGAINST DRUG TRAFFICKING

In 2026, the Ecuadorian government has intensified its efforts to curb the expansion of drug trafficking in the country's main ports, particularly in Guayaquil, which is considered one of the most sensitive points for the outbound flow of drugs to Europe and the United States. These measures are part of a comprehensive strategy that combines technological investment, the deployment of security forces and international cooperation, aimed at regaining territorial control and safeguarding the foreign trade logistics chain.

MASSIVE DEPLOYMENT OF THE ARMED FORCES AND NATIONAL POLICE

As part of the phase known as "Total Offensive" of the Security Block, the Government launched a special operation involving the deployment of 10,000 personnel across the provinces of Guayas, Los Ríos and Manabí. In Guayaquil, this intervention included simultaneous raids at various Terminals such as Guayaquil Port Terminal, Naportec and TPG.(1) The Armed Forces and the National Police, supported by specialised units and anti-narcotics canine carried out thorough inspections of containers, trucks and cargo areas, covering all stages of the export process. Access points to the ports were secured to ensure full operational control.

TECHNOLOGICAL CONTROLS AND NEW TRACEABILITY SYSTEMS

The Minister of Transport and Infrastructure announced the implementation of the so-called "third plate", a control system based on RFID technology. This mechanism will allow cargo vehicles to be tracked at strategic points such as port entrances, border zones and the national road network. The purpose of this system is to reduce blind spots exploited by criminal organisations to infiltrate illicit cargo and improve the traceability of goods from their point of origin to their final destination.(2)

INTERINSTITUTIONAL COORDINATION AND INTERNATIONAL COOPERATION

Authorities have highlighted the importance of close cooperation between the State and port operators. In the case of TPG Terminal, its management confirmed that information and operational tools are being provided to the Armed Forces and the National Police to strengthen intelligence-gathering and control activities. In addition, the port participates in initiatives and projects promoted by the European Union and the United States, aimed at reducing vulnerabilities in the logistics chain and raising port security standards in line with international benchmarks.



Our Power Maritima team engaged in a hands-on, collaborative learning day

PRIVATE INVESTMENT IN SECURITY AND PORT MODERNISATION

The Guayaquil Port Terminal announced an investment of more than USD 50 million by 2026, aimed at improving security measures and modernising infrastructure. Planned actions include the incorporation of additional scanners, the use of artificial intelligence for risk detection, and the automation of operational processes. These measures are complemented by a sustainability-focused approach, including the deployment of a 100% electric truck fleet.(3)

In this context, TPG has stated its goal of becoming, by 2026, “the safest port in the South Pacific.” Its General Manager, Luisenrique Navas, emphasised that the combination of technological investment, cooperation with public authorities and continuous process improvement will create a significant advantage in cargo protection. This objective seeks not only to shield the port from drug trafficking, but also to strengthen international confidence in Ecuador’s port system and to consolidate Guayaquil as a secure and competitive logistics hub in the region.

References:

1. PRIMICIAS, 2026. Fase “Ataque Total” | Gobierno anuncia despliegue masivo de militares en Guayas, Los Ríos y Manabí. Fuente: <https://www.primicias.ec/seguridad/despliegue-masivo-militares-guayas-rios-manabi-bloque-seguridad-fase-ataque-total-113917/>
2. Ecuador comunicación, 2026. Bloque de Seguridad toma puertos de Guayaquil: allanamientos masivos en Terminal Portuaria, Naportec y TPG contra narcotráfico. Fuente: <https://ecuadorcomunicacion.com/bloque-de-seguridad-toma-puertos-de-guayaquil-allanamientos-masivos-en-terminal-portuaria-naportec-y-tpg-contra-narcotrafico>
3. <https://www.swissinfo.ch/spa/el-terminal-portuario-de-guayaquil-busca-ser-en-2026-el-puerto-m%C3%A1s-seguro-del-pac%C3%ADfico-sur/90809834>



Melanie Arechua
member of the Power Maritima team



Leonidas Villagran, Andres Vasconez, Ligia Condoy sharing with Rosa Moran of Swiss Re in Cartagena

IN-DEPTH SHIPPING LAW

ECUADOR

*Leonidas Villagran,LLM
Senior Partner, VL Attorneys*

FORUM AND JURISDICTION

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.

For 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 its agent.

Reproduced with permission from Law Business Research Ltd. This article was first published in Lexology In-Depth: Shipping Law, edition 12. For further information, please visit:
<https://lexology.com/indepth>

TIME BAR TERMS

Environmental damage:	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;
Payment of freight or demurrage:	The prescription term is one year;
Declaration of general average:	The term is six months;
Recovery of general average contribution:	The term is one year;
Cargo claims under a bill of lading (BL):	The prescription term is one year, which is in line with The Hague Visby Rules. Anyway, once Hamburg Rules begin to rule (1/Aug/2026) the prescription term will switch to two years to the contracts of carriage by sea under said Rules.
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;
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
Cargo claims in international multimodal transportation to or from a port member of the Andean Community:	The prescription term is nine months as a general rule.

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.

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.

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.



Naoki Hashimoto, Japan P&I Club

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 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.

SHIPPING CONTRACTS

SHIPBUILDING

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



Leonidas Villagran alongside Ann Fenech, President of the CMI (Comité Maritime International)



With our friends at the West of England P&I Club in Cartagena, Emilly McCulloch and Damian Mustard

In contrast, if the documents 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 that a guarantee is 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.



Andres Vasconez, Ligia Condoy, Emily McCulloch and Leonidas Villagran

CONTRACTS OF CARRIAGE

The Code of Commerce 2019 is the key legislation regarding contracts of carriage. Basically, maritime provisions in this Code are inspired in the Chilean Code of Commerce which follows the Hamburg Rules. Therefore, many provisions in the Ecuador Code are in line with the Hamburg Rules.

Ecuador has been party to The Hague-Visby Rules (not party to the SDR Protocol) but recently ratified the Hamburg Rules which will come in effect on 1 August 2026.

Besides, owing to Ecuador's membership in the Andean Community, the Community regulations concerning multimodal transportation contained in Decisions 331 and 393 are part of the legislation of Ecuador.

The Code of Commerce 2019 states that all contracts of carriage for cargo are to be subject to its provisions, regardless of the nationality of the ship, the carriers and 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, charterparties are not under this regulation. However, when a BL is issued in compliance of a charterparty 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 conjoined 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. TRANNAVE is also involved in cabotage of hydrocarbons.



Leonidas Villagran, and Cristina Quinteros of Villagran Lara Attorneys and Ernesto Escobar current delegate to the IMO Maritime Safety Committee.

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 place of loading or unloading of the subject cargo; and
- D. ones 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.

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 regarding 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.



At Brooks Bells, Adrian Scales, Leonidas Villagran and Andres Vazconez

Regarding international conventions that include regimes for limitation of liabilities, Ecuador is party to The Hague-Visby Rules and therefore its provisions regarding limitation would apply. Anyway, as Ecuador has recently ratified The Hamburg Rules and once these Rules begin to enforce (1/8/2026), limitation will be limited according to what is stated in said rules meaning 835 SDR per package or other shipping unit, or 2.5 SDR for kilogram of gross weight (whichever is the higher).

Besides, the Andean Community regulations regarding multimodal transportation provide limitations similar to The Hague Visby Rules: 666.67 SDR per package or 2 SDR per KG. (whichever is the higher).

Regarding death or permanent incapacity to passengers, the Code of Commerce 2019 states a compensation of one hundred unified basic salaries (currently US\$48,200). 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.



Our friends of UK P&I Club John Hearn and Vicky Clarke. Ligia Condoy and Andres Vasconez of Power Maritima and Leonidas Villagran of Villagran Lara Attorneys

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.

Ecuador is party to the Arrest of Ships Convention 1999. Consequently, arrest of ships is possible as long as it is executed on the basis of a maritime claim, according to the closed list of 22 categories. Furthermore, under the 1999 Convention, the arrest of sister ships is possible.

In addition, Ecuador participates in the Andean Community of Nations. Therefore, the regulations of this entity are part of its legal system. The Commission of the Andean Community, through Decision of the Cartagena Agreement No. 487 on Maritime Guarantees and Preventive Arrest of Ships, adopted as community regulations the principles of the International Convention on Maritime Liens and Mortgages 1993. Therefore, these are mandatory regulations for all the countries of the Community: Bolivia, Colombia, Ecuador and Peru.

Although Colombia has not acceded to the Arrest of Ships Convention 1999 due to the fact that it belongs to the Andean Community, this Decision is part of its legal system. In the case of Ecuador, this regulation is published in the Official Registry 259 of 5 February 2001.

The aforementioned Decision 487 of the Andean Community, in line with the Arrest of Ships Convention 1999, indicates a closed list of 22 maritime categories that appear in the text of the Convention.



The Power Maritima team, Gabriel Gonzalez and Juan Patricio Corral of Intact Insurance in Cartagena

THE CODE OF COMMERCE 2019

Article 895 of the Code of Commerce of Ecuador 2019, when dealing with the arrest of ships, conceptualizes as a creditor any person who alleges a maritime claim. Furthermore, it determines as maritime claims those established in the Andean Community decisions or current international instruments, there by ratifying the closed list of 22 maritime categories that appear in both the 1999 Convention and Decision 487 of the Andean Community of Nations.

Likewise, it establishes that arrest or preventive seizure is any immobilisation or restriction on the sailing of a ship that is imposed by a judge. Additionally, Article 927 of the Commercial Code confirms the principle that a ship can only be arrested by a judge's resolution and that the arrest should only be made by virtue of a maritime claim. The arrest of a ship is not possible for a claim that does not have the characteristic of being maritime.

Finally, it is established that the arrest of a ship to which maritime claim is alleged will proceed in accordance with the provisions of community decisions or international instruments.

THE NAVIGATION ACT

On 14 June 2021, Ecuador adopted the Navigation Act, which is basically regulatory in nature. However, it includes some provisions through which the harbour master has powers to immobilise ships in the event of maritime accidents.

Thus, Paragraph 12 of Article 15 of this Act states the power of the harbour master to require, within the corresponding administrative process, certificate of insurance that guarantees coverage of the costs of damage to third parties.



Andres Vasconez, Jessie Villagran, Gabriel Reina of West (New York), Emily McCulloch of WOE, Ligia Condoy, Leonidas Villagran, Alton Peralta and Leonidas Daniel Villagran

On the other hand, Article 133 prohibits sailing of a ship involved in a maritime pollution incident until the provision of a bond or guarantee in an amount set by the corresponding Harbour Master.

THE GENERAL ORGANIC CODE FOR PROCESS

For the purposes of requesting the execution of an arrest of a ship, it is necessary to refer to the procedural rules determined in the General Organic Code for Process (COGEP).

Basically, the COGEP is a procedural code that maintains a special chapter on preventive measures, but in general terms, not specifically referring to the arrest of ships.

Thus, Article 124 establishes that any person is able to request the arrest of the thing that is going to be litigated or the assets that secure the credit, and that this will be done by a first level judge.

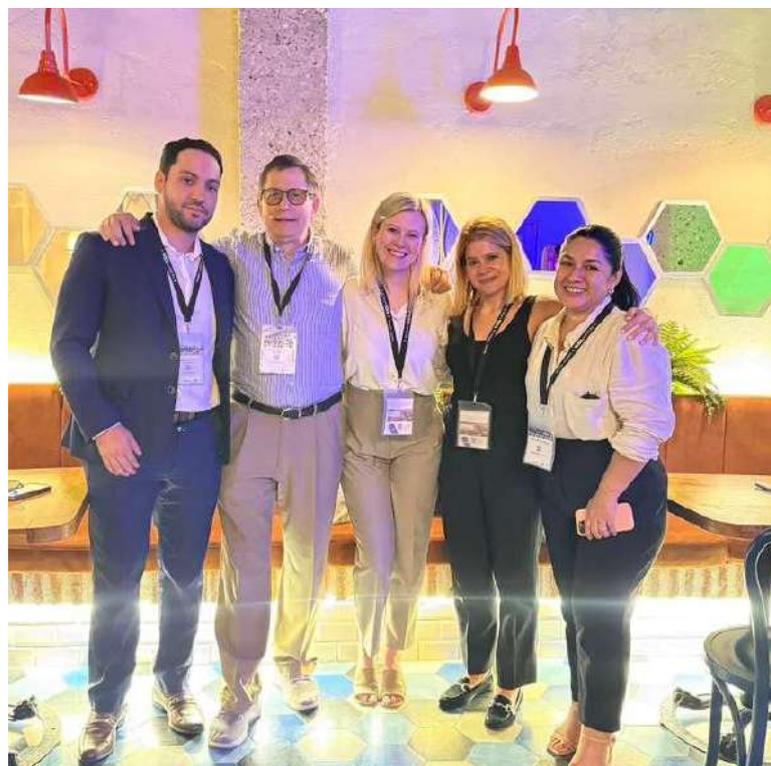
Additionally, Article 125 of the COGEP determines the general requirements for ordering the arrest of assets. Basically, these are evidence: (1) on the existence of credit; and (2) that the defendant's assets are in poor condition or with the possibility of disappearing or being hidden or that the defendant seeks to dispose of them.

Furthermore, once a claim for arrest has been filed, in accordance with Article 127 the judge must call a hearing within 48 hours to hear the applicant and rule on the request. This hearing consists of a monologue, where the applicant is the only party, since the defendant party has not yet been summoned. The applicant must provide the elements to persuade the judge to grant the measure.

Additionally, and given the characteristics of our legal system, the applicant for an arrest measure is to provide evidence of its representation by presenting the document establishing its legal status or its power of attorney duly legalised or apostilled.

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.



Sharing lunch in Cartagena with our friends of Shipowners Amy Bingham and Arsinoi Iliokaftou

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 or her 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 Ecuadorian judiciary.

REGULATION

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.

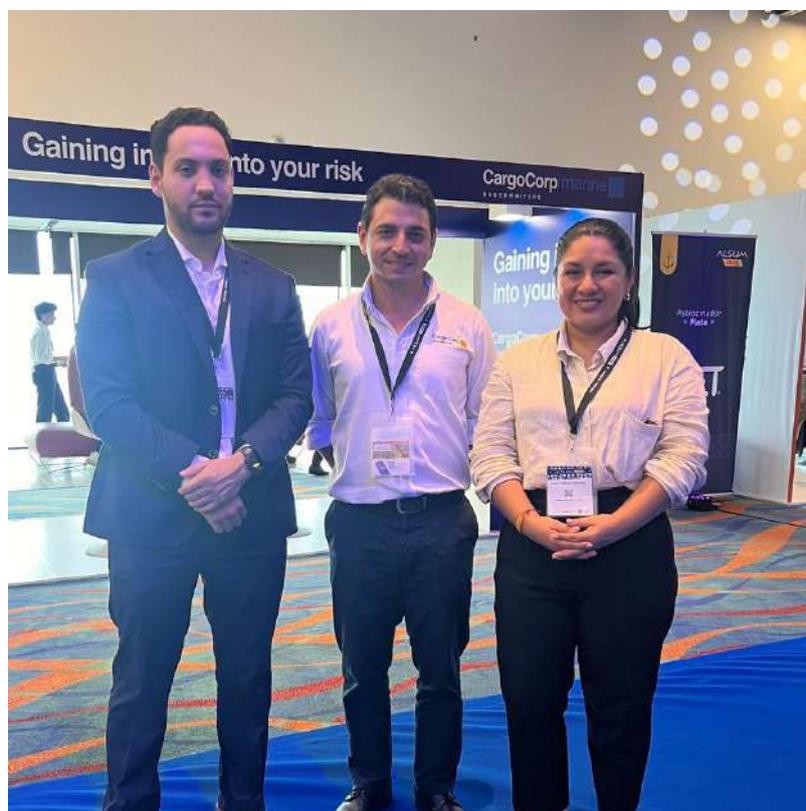
The Navigation Act is a recent 2021 statute with the objective of guaranteeing safety in navigation. The Act includes the creation of the National Maritime Organisation, composed of several ministries presided over by the Minister of Defence. One of its main duties concerns safety. Therefore, it is expected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

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.



The Power Maritima team with Jose Villegas of CargoCorp Underwriters in Cartagena

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.

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 for 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 damage. Lack of notification or compliance entitles the environmental authority to impose huge fines. Remediation and compensation for damage 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.



Elena Talegón, Head of Marine Iberia and Ligia Condoy

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

- A. pollution in the seas, with a penalty of imprisonment from three to five years (Article 251);
- B. air pollution, with a penalty of one to three years (Article 253); and
- C. criminal liability of entities, with these penalties according to the infringement: fines from US\$48,200 to US\$482,000, temporal closure and remediation of environmental damage (Article 258).

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.



Andres Vasconez, Bjørn Flâm, Daria Avdeeva, Eleanor Scudder and Leonidas Villagran at the SKULD office in Oslo

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. Moreover, the Navigation Act states that the harbour master has authority to order removal of wrecks when there is an obstacle to safe navigation.

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.

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. claims for loss or damage to 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;
- 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; and
- G. it is not possible to waive passengers' rights stated in the Code of Commerce 2019. Any stipulation in breach of this principle is considered not valid.

SEAFARERS' RIGHTS

The MLC2006 was ratified by Presidential Decree on 1 April 2024. Previously, the legislature on January 2022 approved its terms and passed it to the President. 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.

OUTLOOK AND CONCLUSIONS

There have been important developments in the shipping industry, both commercial and regulatory, in the past few 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 where 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 among the public. Currently, 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 or clarified.

The ratification of the Maritime Labour Convention 2006 brings Ecuador implements the four pillars of the Maritime International Regulatory System, having only the Sixth Annex to the MARPOL (73/78) pending. Moreover, the recent ratification of the Hamburg Rules provides a clear direction in relation to the regime related to contracts of carriage by sea.



Hector Villagran Reinoso with Master Wang Yong at China P&I offices in Shanghai



Always great to connect with professionals from all over the world. Andres Vasconez, André Jebrayel and Leonidas Villagran



Cheryl Acker, Andres Vasconez, Gabriel Reina, Leonidas Daniel Villagran, Ligia Condoy, Claudia Botero-Götz, Leonidas Villagran, Evanthia Coffee, Renuha Ragulan, Müge Anber during the visit to Gard at the New York office



Emily McCulloch of WOE, Aurelio Fernandez-Conchoso of Clyde & Co, Ligia Condoy, Alton Peralta of WOE, Leonidas Daniel Villagran, Gabriel Reina West(New York), Andres Vasconez, Jessie Villagran, Kevin Albertson of West and Leonidas Villagran



Garry Frost, Andres Vasconez and Jonathan Spencer at the ALSUM Congress



Andres Vasconez, Ligia Condoy and Niel Beckwith, Claims Director at the UK P&I Club



With our friends of Brookes Bell in Liverpool. Andres Vasconez, Adrian Scales , Leonidas Villagran, Marcelo Rodrigues and Stephen Shaw of PSA Marine



Andres Vasconez, Ligia Condoy, Craig McBurnie and Mike Robinson of NorthStandard P&I Club



Power Maritime Team with Ian Grainger and Takeisha Barrow of Shipowners



Andres Vasconez and Enam Hussain, Head of Operations for Members in the Middle East from West of England along with colleagues correspondents based in Malta



CONTACT US:

Urb. Puerto Azul, Guayaquil, Ecuador
e-mail: info@powermaritima.net
www.powermaritima.net



VILLAGRÁN LARA
attorneys

CONTACT US:

La Vista de San Eduardo, Edificio 100 - A Guayaquil, Ecuador
e-mail: contact@villagranlara.com
www.villagranlara.com