

Leonidas Villagran

IN-DEPTH

Shipping Law

ECUADOR

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Including list of Ecuador legislation related to maritime law

INDEX

INTRODUCTION	9
Commercial overview of the shipping industry	9
General overview of the legislative framework	9
YEAR IN REVIEW	12
FORUM AND JURISDICTION	12
Courts	12
Prescription - Time bar	13
Arbitration and ADR	15
Enforcement of foreign judgments and arbitral awards	16
SHIPPING CONTRACTS	17
Shipbuilding	17
Contracts of carriage	18
Cargo claims	20
Limitation of liability	21
REMEDIES	22
Ship arrest	22
Court orders for sale of a vessel	25
REGULATIONS	26
Safety	26
Port state control	27
Registration and classification	27
Environmental Regulation	28

INDEX

Collisions, salvage and wrecks	29
Passengers' rights	31
Seafarers' rights	32
Outlook and conclusions	32
LEGISLATION RELATED TO SHIPPING LAW	37

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I. INTRODUCTION¹

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

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 judicial precedents according to the Constitution³ and the duty of the National Court to generate binding rules of jurisprudence for repeated and similar judgments⁴ or for incomplete or unclear legislation in determined matters.⁵

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 to which Ecuador is a party.

1 Leonidas Villagran is a senior partner at Villagran Lara. The author wishes to thank Evelyn Garcia, for her assistance with the material on the arrest of ships.

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

3 Ecuador Constitution, Art. 436 #6. Organic Act of Jurisdictional warranties and constitutional control, Art. 2 #3

4 Ecuador Constitution, Art.185

5 Organic Judiciary Code, Art.180 #6

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.

The Commercial Code that entered into effect in 2019 makes fundamental changes 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 by a decree published in the Official Gazette on 30 June 2023.

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, Ecuador is involved in the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) regarding 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).

At the time of writing, the Maritime Labour Convention (MLC 96) was approved in 2022 by the legislature. The Convention is pending the approval of the President.

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 (the 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 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.

II. YEAR IN REVIEW

Ecuador has experienced recent developments in the change of maritime law with the enactment of the Code of Commerce 2019 and the Navigation Act 2021. 2023 brought the regulation for the Navigation Act.

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.

For civil and labour claims, the procedure in court is to be followed according to the General Organic Procedure Code 2016 COGEP. This Code stipulates that, as a general rule, the plaintiff needs to present his or her evidence to the court.⁶

⁶ COGEP, Art. 143 #5

This rule provides exceptions to allow the plaintiff to present either evidence that has been contested by the defendant⁷ or new evidence, the existence of which he or she was not aware.⁸

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.⁹

II. Prescription - Time bar

Prescription terms may apply in the following circumstances:

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; Ecuador Constitution, ¹⁰
Payment of freight or demurrage	the prescription term is one year; ¹¹
Declaration of general average	the term is six months; ¹²
Recovery of general average contribution	the term is one year; ¹³
Cargo claims under a bill of lading (BL)	the prescription term is one year, which is in line with the Hague Visby Rules; ¹⁴

⁷ COGEP, Art. 151

⁸ COGEP, Art. 166

⁹ Code of Commerce, Art. 891

<p>Collisions</p>	<p>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;¹⁵</p>
<p>Claims for damages in delict by non-passengers (injury, death and damage to property)</p>	<p>The term is four years, according to the general rules of prescription in the Civil Code; and</p>
<p>Cargo claims in international multimodal transportation to or from a port member of the Andean Community:</p>	<p>Nine months as a general rule. ¹⁶</p>
<p>Claims from passengers: personal injury, death, loss or damage to luggage</p>	<p>Two years. ¹⁷</p>
<p>References:</p> <p>10 Ecuador Constitution, Art. 396 11 Code of Commerce, Art. 1210 12 Code of Commerce, Art. 1211 13 Code of Commerce, Art. 1212 14 Code of Commerce, Art. 1212 15 Code of Commerce, Arts. 1213 16 Cartagena Agreement. Andean Community. Decisions 331 and 393 related to Multimodal transport 17 Code of Commerce, Art. 1214 c)</p>	

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.¹⁸

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.¹⁹

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.

III. 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.

¹⁸ COGEP, Art. 64 #4

¹⁹ Code of Commerce, Art. 1215

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.

IV. 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.²⁰

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.²¹

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 awards²², 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.

²⁰ COGEP, Arts. 102, 104

²¹ COGEP, Art. 105

²² Arbitration and Mediation Act, Art. 42

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.²³

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.

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 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.

In contrast, if the documents are provided by the shipbuilder, then the legal relation is to be considered as a contract of sale.²⁴ 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.²⁵

23 Ecuador is party to The Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents (HCCH 1961 Apostille Convention)

24 Civil Code, Art. 1930

25 Organic Navigation Act, Art. 30

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.²⁶

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.

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.

26 Regulation Organic Navigation Act, Art. 65

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 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.²⁷ Currently, state owned shipping companies are FLOPEC and TRANSNAVE.

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:

²⁷ *Export and Transport by Sea facilitation Act*, Art. 15

- 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 regarding the limitation of liability for carriers; however, these provisions only rely on Andean Community law and international conventions to which Ecuador is party.²⁸ Currently, there is no community regulation, with the exception of specific limitations determined for multimodal transportation.

Regarding 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.

Regarding death or permanent incapacity to passengers, the Code of Commerce 2019 states a compensation of US\$45,000.

28 Code of Commerce, Art. 866, 869

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.

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.

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 Code of Commerce 2019

Article 895 of the Code of Commerce of Ecuador 2019, when dealing with the arrest of ships, conceptualises 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, thereby 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 seizure 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.

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 their representation by presenting the document establishing their legal status or their power of attorney duly legalised or apostilled.

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 Ecuadorian judiciary.

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 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.

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.

IV. Environmental regulation

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

- 1.** strict liability; and
- 2.** 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.

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\$45,000 to US\$225,000, temporal closure

D. and remediation of environmental damage (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. 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.

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.** 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.

VII. Seafarers' rights

The MLC2006 was ratified by Presidential decree on 1 April 2024. 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 AND CONCLUSIONS

There have been important developments in the shipping industry, both commercial and regulatory, in the past few years related to the shipping business as well to the regulatory side.

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 resolved 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 Navy, 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.

Finally, with the recent ratification of the Maritime Labour Convention Ecuador completes its legislation related to the four pillars of the International regulatory system, pending only the ratification of Annex 6 of MARPOL 73/78.

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 decided a collision case in application of the apportion of liabilities principle from 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 apportion principle, which provides a new way of deciding administrative cases. Anyway, further decisions in collision cases do not enjoy this principle due that maritime authorities seem to be reluctant to assign percentages of fault.

Legislation related to

Shipping Law

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LEGISLATION RELATED TO SHIPPING LAW

Updated February 2025

by Leonidas Villagrán

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 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;
- 1992 International Convention on Civil Liability of oil pollution damage, 1969 (CLC Protocol 1992)
- International Convention related 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

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
- Act for aquaculture and fishing, 2020
- Code of Commerce, 2019
- Act for the Special Regime of the Province of Galapagos, 2015
- Act for facilitation of exports and transport by sea, 1992
- Nacional Port Administration Regime Act, 1979
- Statute for support to the National Merchant Marine, 1979
- Oil Terminals Administrative Act, 1977
- Sea and river transportation Act, 1972
- General Ports Act, 1970



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