

**London Seminar – October 19<sup>th</sup>, 2010**

**Legal and Practical Aspects When Dealing With  
Mass Casualties within Argentinian Jurisdiction**

**Introduction**

This paper is intended to review and analyse the various legal practical aspects that could be enabled before the occurrence of accidents of importance in our jurisdictional waters, and its direct and indirect consequences, whereas considering the internal regulations as well as the international rules applicable.

**Jurisdictional scope**

When we speak of jurisdictional scope, or aquatic areas, we intend to establish the extent of the sovereignty of Argentina on adjacent seas.

Initially, it was our Civil Code in its Article No. 2340 which established a distance of one marine league (equivalent to 3 nautical miles) from the line of the most low tide to establish public domain assets. And, as a contiguous area, extended distance through the 4 nautical miles (equivalent to 12 nautical miles).

This regulation lasted until the Civil Code was modified by Law No. 17,711, which referred that distance to determination by special legislation.

Law No. 17,094 was charged with extending the distance of the territorial sea up to 200 nm, according to the same parameter (line of the most low tide). Still, the same was contrary to international standards of the time.

In 1958 in the Geneva Convention on the Territorial Sea and the Contiguous Zone, the following conventions were ratified on: Territorial Sea and Contiguous Zone, High Seas, Fisheries, Continental Shelf.

In relation to the territorial sea, this was determined indirectly, and may not exceed 12 miles which limited the contiguous zone. Other issues were also dealt with, as harmless passage, among others. This Convention did not obtain the expected ratifications.

As a result, United Nations invited to the Conference of the Sea, which was held in Montego Bay, Jamaica in 1982. Argentina did not subscribe to it, by supporting the Convention the principle of consultation to the interests of the people in the event of a dispute, due to the situation with the United Kingdom in the Falklands.

According to the Convention, the territorial sea was left with an extension of 12 nautical miles to exercise full sovereignty, continuing with the contiguous zone with an extension up to 24 miles, in which proceedings may be brought for the prevention and punishment of offences in customs, immigration, and tax matters. Finally, the exclusive economic zone was defined with an extension up to 200 nautical miles, where all its fiscal, judicial, preventive and repressive powers can also be exercised.

All the above mentioned was approved by Law No. 2.453, with the corresponding specific declarations.

### **Safety in Navigation**

After defining the legal jurisdictional scope for our sovereignty, we will focus on the topic that concerns us, which has direct relation with the security in the navigation, both navigational aspects as well as violations of internal regulations and international conventions.

Motivation and development of this area had its origin in major disasters that historically happened at sea, starting with 'Titanic', and can draw a very important list of tragic events which convened joint and ongoing international work to develop criteria for unification through the various conventions.

Under the aegis of the United Nations agency, International Maritime Organization (IMO), whose aim is the adoption of standards on safety, to facilitate navigation, prevention and containment of pollution, took as their slogan "Safe, Secure and Efficient Shipping on Clean Oceans". We can list a number of conventions, such as: Solas 1960 and 1974, Line Loads 1966, Prevention of Collisions 1972, Container Security 1972, Telecommunications 1976, Security of Fishing Vessels, Training of Seafarers 1978, among others.

Argentine Coast Guard is the maritime authority in the country and is within the scope of the Ministry of Justice, Security and Human Rights, dependent on the National Executive (Act 18.398). It exercises its jurisdiction in navigable waters of the nation, seas, rivers, lakes, canals serving to the interjurisdictional transit and trade. It effectively exercises everything concerning the tasks of police of safety of navigation, in compliance with all applicable laws.

### **Intervention of the Authority**

Being the Argentine Coast Guard the authority responsible and accountable for cases in which occur claims to take the measures necessary to deal with the procedures, we will make an analysis of its background, rules and conventions governing for harmful events to our interests as a nation and also to environmental protection.

As enshrines it the General Act No. 18,398, the Law of Navigation No. 20,094 and coincident nourished legislation, the powers of the Argentine Coast Guard are defined by a comprehensive and homogeneous profile.

By virtue of its functional and historical tradition, the Argentine Coast Guard is identified as the body by means of which the State exercises the police of safety of navigation, security and public order in the waters under national jurisdiction and ports security police.

In addition, this national authority is in charge of the implementation of the international conventions concerning the safety of human life at sea, prevention and the fight against pollution and the related legal and technical matters, as established in the laws of acceptance of the country.

It also serves in the exercise of the duties of the country as a Flag State and as a Port State, for the registration of ships and for control of their conditions of security, according to the laws and regulations which assign the Argentine Coast Guard to these competencies and the respective international agreements.

The Prefecture is the Argentine Maritime Authority for excellence by the multiplicity of general and specific circumstances which its responsibilities cover and by merit of the law which repeatedly expresses it.

### **Brief History**

The Spanish Crown transferred to their colonies the same administrative structure governing the peninsula.

Attributions and responsibilities had initially been set in the "Collection of Laws of the Kingdoms of Indias", enacted in 1680 by Charles II and more precisely, in the "General Ordinances" 1793, dictated by Charles IV, whose title 7 regulated "general police of ports and any other anchorages in charge of the Captains of Ports and the other obligations of these", with features such as practical enabling, inspection of safety conditions of ships, preliminary proceedings by occurrences of navigation, crimes and infringements, clearance of ships, mariners and passengers control actions, ban on throwing garbage and debris to waters, operation of the Board of health, etc. with respect to which the Prefecture is still currently serving.

This grouping of functions remained on time with slight variations from the May Revolution and many prominent men of our history occupied the post of Captain of Ports and Commander of Enrolment.

In 1896 the law No. 3.445 was enacted, configuring a legal framework that attests to the antiquity of the institution and that explains that anything new is coming with this law and that the Prefecture is the same Spanish organization called "Port Captain" which still fulfils the same functions, as successor of the ancient captaincies and exclusive police of the seas, rivers, channels and ports under national jurisdiction. That functional scope reiterates and broadens then by laws enacted since, among which is the Navigation Law No. 20,094. That instrument governed its evolution until 1969, year when the Law No. 18,398 was promulgated, current repertoire of mission and competencies that State entrusts to the Argentine Coast Guard.

### **Maritime Regulations**

Economic activities are subject in each State to certain rules aimed at regulating relations between actors and to facilitate their development. As it relates to the carriage by water, it is necessary to also pay attention to the safety of navigation, to the prevention of pollution by ships and various technical and legal factors specific to the sector.

Development of navigation, also won the necessity of developing international instruments to facilitate the carriage by water and increase safety, contributing to the need to protect life and property by the specific risk of the medium. These two aspects shaped the regulatory complex governing navigation in all its facets.

The Prefecture subjects to approval of the National Executive the regulations arising out of laws and international conventions, promotes its update and amendments and dictates the remaining provisions and ordinances which constitute together the regulatory complex known generically as administrative system of navigation or maritime regulations.

There are numerous standards of general utility for shipping, shipbuilding, navigator staff, entities and related agencies, which dictates the Prefecture, many of them closely related with conventions and recommendations of the International Maritime Organization.

These publications include the "Maritime, River and Lake Navigation System" -REGINAVE-, compendium of provisions relating to ships, navigation and crews; the "By-laws", which the National Naval Prefect dictates to exercise the police of safety of navigation; the Newsletter for the Merchant Marine and the Maritime International News Bulletin, intended both to disseminate news and innovations in the national and international regulatory standards.

### **International Development**

The responsibilities which the law assigns to the Argentine Coast Guard, largely demand coordination of their professional work with international organizations and foreign institutions that meet similar tasks. These are the concern to contribute to the safety of life at sea, to preserve the marine environment, and meet, through concerted standards at international level, these aspects and all related technical and legal issues.

The area of greatest importance takes place in the International Maritime Organization, the UN agency specialized in maritime issues.

At the regional, from the creation of the Operational Network of Regional Cooperation of Maritime Authorities of South America, Mexico and Panama (ROCRAM) in 1983, the Prefecture also fulfils an important work by making contributions that have been significant to their programmes of work, the design of a strategy for the protection of the marine environment, the training of human resources of the merchant marine and maritime administrations, automatic data processing, development of contingency plans, control of traffic of vessels in the region, improvement of maritime legislation, the fight against drug trafficking and other subjects, in the framework of the mechanisms of cooperation technique characteristic of this organization. In the field of the ROCRAM, carrying out functions on the occasion of the Agreement of Viña del Mar for control of ships by the Port State, whose secretariat and information centre were entrusted to the Argentine Coast Guard.

The Prefecture participates in meetings that are carried out at the bilateral level and within the structures set up by various treaties for consideration of technical and legal issues relating to legal responsibilities, as in the case of the Administering Commissions of the Rivers Plate and Uruguay, the Intergovernmental Committee of the Paraguay – Paraná Waterway, groups of labour of Mercosur, the system of the Cuenca del Plata, border commissions, etc.

Relations of exchange and cooperation with foreign institutions with similar functions, especially services known as Coast Guard, link the Prefecture with the American United States Coast Guard Service carrying out professional activities of mutual interest.

### **International Conventions**

The International Maritime Organization (IMO) has promoted numerous international instruments dealing with maritime safety, the protection of the marine environment and various technical and legal issues related to areas of responsibility.

Conventions relating to safety of human life at sea, prevention of collisions, cargo lines, containers security, maritime satellite telecommunications, safety of fishing vessels, the training and certification of seafarers, search and sea rescue and salvage, the prevention of pollution from ships, the dumping of wastes and other matter at sea, cooperation in combating pollution, liability and compensation, facilitating traffic maritime, the tonnage measurement of ships, and the suppression of unlawful conducts must be cited.

Implementation of these conventions lies in the appropriate state management bodies of the parties, as in our country with the Argentine Coast Guard, to whom the legislation entrusts repeatedly the mission of being a body of application of the navigation-related conventions in general and specifically the issues relating to maritime safety, pollution prevention as well as the related technical and legal issues.

The Prefecture attended and regularly attends meetings of the bodies of work of the IMO, contributes to the implementation of their programmes of work and has with respect to it a notorious organic and functional parallelism, allowing its identification as the characteristic body of the National Public Administration, to meet the obligations that demands the implementation in the country of the conventions that such specialized United Nations agency manages.

The Argentine Republic figures prominently among the Member States of the International Maritime Organization, by the number of agreements accepted and implemented effectively, corresponding to the background that our country has in international areas and the traditional trajectory of its institutions.

### **Objectives**

The pursuit of international shipping, before maritime navigation-specific risks, is relative to the safety of human life at sea. Therefore, to ensure the conclusion of the universal standards, successive agreed instruments were given that appellation.

Those adopted in 1914, 1929, 1948, 1960, were succeeded by one which governs today: the International Convention for the Safety of Human Life at Sea 1974, repeatedly amended and extended to accommodate new technological developments and the resulting experience of various occurrences of navigation.

This agreement constitutes the cornerstone of the international maritime regulatory and along with those concerning prevention of collisions, load lines, tonnage measurement and the prevention of pollution by ships, form the main set of rules governing relations emerging from maritime transport.

The construction of ships, including the rules on compartmenting, stability, propulsion plants and electrical installations, prevention, detection and fire extinguishing, devices and means of rescue and salvage, maritime radio communications, the safety of navigation, transport of grain, of dangerous goods,

rules on nuclear ships, the management of safe operation of ships, the security measures applicable to the high-speed craft and the special measures to enhance maritime security, give a clear idea of the diversity of its contents and how comprehensive they are, from which also derive numerous codes, recommendations and guidelines, which complement the vast repertoire of its standards.

The Prefecture is the body of application of this Convention in Argentina and has consequently adopted operating and administrative procedures and organizational measures to enable the effectiveness of its forecasts, by means of the police for safety in navigation.

### **Ship Inspections**

Inspection and certification of vessel safety conditions is carried out by the Prefecture, in accordance with the international conventions which provide their details and supplementary national regulations.

The Prefecture has these functions, meeting the commitments of the Argentine Republic as Flag State, and in relation to vessels that reach port in its territory, as the Port State.

In the first case, the verification of safety of ships means: examination and adoption of plans and calculations, analysis of projects of construction, modification and scrap, measurements and calculations to determine its capacity and tonnage, collection of all concerning technical information and the granting of national and international security certificates, prior analysis of the result of technical inspections practiced on hull, propulsion plants, electrical installations, communications equipment, life-saving appliances and equipment to prevent pollution.

In the framework of rules relating to the Port State, the performance of the Prefecture is governed by the agreement of Viña del Mar, concluded between Latin American maritime authorities in accordance with the measures taken by the International Maritime Organization, to coordinate regional control of ships in the search for a more efficient enforcement of international safety standards.

The Secretariat and the Centre of Information of this system are carried out by the Prefecture, as decided by the maritime region authorities when signing the agreement.

### **Research**

The occurrences of navigation, by its characteristics, place where they occur, media speakers and the myriad converging factors, deserve special consideration for their clarification, since the aggregated information allows Justice and same Prefecture to deal with the events.

Its research is therefore a trait of singular importance among the activities conducted by the Prefecture, not only for determining emerging responsibilities and consequences in the professional



performance of the staff of the Merchant Navy, but for the weighting of efficiency standards on safety of navigation and its eventual improvement.

Inquiries in cases of shipwrecks, collisions, strandings and other accidents of navigation, are made in jurisdictional dependencies and supervised by the Police Directorate of Security and Judicial, supplying to the IMO reports required on various types of occurrences and a summary of the findings of the investigation of major significance.

The Prefecture acts in administrative jurisdiction of navigation, which the legislation assigns to this maritime authority originally and exclusively, giving intervention to the competent judicial authorities in cases where appropriate, without prejudice to resolve within administrative headquarters the cases of misconduct or contravention of safety of navigation.

### **Dangerous Cargo**

Around 50% of the loads transported by sea may be considered hazardous, potentially dangerous or harmful to the environment, according to the criteria for classification and identification governed by the International Maritime Organization.

Some are dangerous from the point of view of safety and of their ability to pollute, while others are only harmful to the marine environment.

The continuous rise in the transport of these goods as a result of industrial development, motivated that from yesteryear attention is paid increasingly to this subject.

The International Convention for the Safety of Human Life at Sea is the instrument that contains specific rules on the subject, from which other texts were structured, as the International Maritime Code for Dangerous Goods, which provide for the entire spectrum of the measures conducive to safe transportation and pollution prevention.

As the body of implementation of this Convention, the Prefecture has promoted legislation aimed at the effective measures for identification, packaging, labelling, handling, storage, documentation and other details, which together seek appropriate control operations with dangerous goods and coordinates with other authorities the harmonization of the rules concerning transport in other areas.

### **Crimes and Infringements**

The Prefecture prevents and punishes essentially the offences and infringements of federal jurisdiction, i.e. those in which the intervention of justice or the competent authorities of the Nation is required.

This does not preclude its intervention in ordinary crimes, where local justice is competent when it is about illegal conducts detected in the consummation process or when there is a need to prevent those responsible from fleeing. In these cases, once the items of proof are collected or the alleged culprits detained, facts are placed on competent authorities by the speediest way.

With respect to the prevention of illicit conducts, it should be noted that in criminal terms and correct police technique, the Prefecture is the best safeguard of public order and security.

### **Port Security**

The Prefecture carries out its functions in ports bathed by waters of national jurisdiction, i.e. those which link to two or more provinces and by being navigable, serve interjurisdictional trade.

As a national police force, the Prefecture exercises in these areas specific duties to safeguard the security of navigation, as well as the public and judicial securities.

The fact that port waters are generally restricted or dangerous for navigation, imposes strict control of the rules and standards applicable.

On the other hand, the prevention and suppression of offences and violations that directly or indirectly could jeopardise, hinder or distort the safety of navigation and port activities linked to it, deserves proper attention.

Transfer domain and/or administration and exploitation of port areas in favour of the provinces, municipalities or private individuals, does not affect the exercise of jurisdiction described by the federal nature of interjurisdictional navigation.

The Prefecture therefore exercises functions as public security police in ports, through local units and by application of laws and respective regulations, some of these dictated by itself - as the Maritime and Police Ordinances-contemplating the detailed rules for each port.

On the other hand, this exercise of public safety police, is closely linked to the police aid to Justice, considering that the offences should be investigated in its first phase of evidentiary harvesting with the involvement of the respective Federal Judge. To this end, each unit of the Prefecture has organized an inquiries office carried out by specialized personnel in the field.

Even in the case of ordinary crimes -not federal- in certain circumstances the Prefecture acts taking urgent measures to gather evidence of the case or pursue and arrest those responsible, giving notice to the local authorities by the speediest means.

### **Aid of Justice**



The Argentine Coast Guard, as police court and auxiliary of Justice, plays various functions within its jurisdiction.

It runs judicial mandates relating to embargoes or interdiction of departure of vessels, avoiding them to leave when their detention has been ordered.

In most cases such interdictions of navigation respond to civil, commercial or labour disputes that their shipowners, captains or legal representatives maintain in different jurisdictions.

These measures materialize once ships arrive in ports and, exceptionally, when intervening judges anywhere in the territorial waters or situation in which the ship finds itself, so provides.

As the auxiliary of Justice, the Prefecture extends its intervention through the investigation of events in its spatial scope and which by their nature are within federal competence.

In such cases, in accordance with the Code of Procedure in this matter, it substances a "preliminary prevention" in which with knowledge of the intervening judge, the proofs accumulated in the course of the investigation are gathered, and once concluded the proceedings are passed on to the respective judge.

The Prefecture attends to injunctions of the most diverse nature, relating to criminal, civil, commercial and labour, in particular those that involve staff of the merchant marine.

### **Surveillance Activity**

Among other areas in which Prefecture must exercise its specific police functions, General Law No. 18,398 assigns to this maritime authority the surveillance of seas, rivers, lakes, canals and other navigable waters which serve to interjurisdictional trade and transit, as well as ports bathed by those same waters.

In accordance with Law No. 18,398 and the law of Security Affairs Act No. 24,059, its own scope integrates with the maritime waters, waters these that Law No. 23,968 -recipient of principles embodied by the "Convention of the Nations United on the Law of the Sea" in 1982- extends to 200 nautical miles, counted from the corresponding coastal baselines.

So in the context of the three above-mentioned laws, the scope of the Prefecture is clearly defined.

It should be noted that the waters monitoring and proper police control, in full compliance with the laws, regulations, ordinances and other provisions in force, are exercised by the Prefecture and its subordinate units as well as by Maritime Coastguard ships and aircraft posted in coastline and coastal inland waterway.

The Economic Exclusive Area -from 12 to 200 nautical miles-, is of particular interest for its importance among the resources of the Nation, where there is great natural wealth in its waters, bed and subsoil. As regards fisheries, from the legal plexus earlier referred, consonant with the Federal Regime of Fisheries -Act No. 24,922- emerge the powers of the Prefecture in the exercise of the auxiliary police on the matter.

However, such economic rights -as a coastal State- which belong to the Nation in its jurisdictional sea, would become illusory without continuous monitoring by means of surface and air operated devices, which the Prefecture carries out in tasks of prevention and suppression of foreign fishing vessels that operate without due authorization.

The preliminary procedure caused by the arrest of an offending vessel, with a view to determining the corresponding penalty policy applicable to those responsible is, according to the mentioned Regime, an allocation assigned to the Prefecture.

### **Environmental Topic and commitment**

The Coast Guard, in order to achieve a greater receptivity and increased responsiveness to the needs and expectations of citizens in their services, through its management and use of their available resources, has materialized the signing of the letter of commitment with the citizen, promptly inherent in environmental protection, which refers to:

Prevention and fight against the pollution of waters by hydrocarbons and other harmful or dangerous substances from ships. In this role Prefecture is authority on the application of numerous specific international conventions.

- Intervention in the prevention and containment of pollution of the marine environment and the reduction of the impact of accidental discharges of pollutants to its minimum.
  - Issuance of regulations aimed at preventing pollution from ships of rivers, lakes and sea waters by oil or other harmful or dangerous substances and verification of compliance to such standards.
  - As authority for the application of the international conventions subscribed by the Argentine Republic, accomplishment of functions of prevention and combating of water pollution by oil and other noxious and hazardous substances from ships.
  - Instruction of the preliminary proceedings and imposition of sanctions to those who are responsible for infringing the provisions in force.
  - Analysis and approval of the emergency plans of vessels and companies.
  - Approval of packagings manufactured locally for export and/or transport of dangerous goods in packages.
  - Subscription to various cooperation agreements with oil companies, in which they contribute with equipment suitable for pollution control and Prefecture operates them with the appropriate deployment of staff and operational means.
  - Granting of National and International Certificates of Prevention of Pollution, in line with existing regulations.
  - Performance of technical inspections of vessels and naval artifacts to validate and renew the corresponding certificates.
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- Granting of Certificates of Fitness and Authorizations of Transport for vessels with national registration carrying dangerous goods in bulk.

Within the preceding context, the Prefecture consents that its services constitute one of the prop commitments assumed, and proceeded to form the Quality Committee and to establish guidelines to achieve certification under standard IRAM - ISO 9001:2008.

The developed management control system is oriented to the needs of the user, not only the owners who must certify their vessels in accordance with the regulatory requirements, but also considering the crew members who must perform their tasks on board, to which the Prefecture monitors safety conditions in order to eliminate the environmental risks and thus protect society in general, which could be affected by possible occurrences caused by ships.

### **IRAM Certification**

The Department of Environmental Protection (Environmental Security Department) currently maintains the Quality Management System, certification awarded in 2004 by the Argentine Institute of Standardization and Certification (IRAM), consistent with standard ISO 9001:2008.

On the other hand the Institution, through the Technological Scientific Department, performs annual maintenance audits attentive to the Certification of Accreditation granted in the year 2008 by the Argentine Agency of Accreditation (OAA) of the Laboratory of the Scientific Ship NIP-SPA-1 "Dr. LELOIR" and of the Chemical Expertise Laboratory in land in charge of the Research Criminalistics Department of the Directorate of Police Judicial Maritime and Ports Protection, in accordance with the international standard ISO/IEC 17.025:2005.

The scope of the Quality Management System includes: **"The preparation and delivery of certificates and documentation which is managed by the interplay of divisions of the Department of Environmental Protection - Environmental Safety Department: Administrative Coordination Division; Environment Technique; Technical Verifications and Audits; Plans; Goods and Hazardous Waste and the Division of Documentation and Certification"**.

The certification of the Quality Management System under the standards ISO 9001:2008, its implementation and the continuous improvement that entails, allows a better service to citizens and through the survey procedures established, information on user's satisfaction and compliance with the product made in Department of Environmental Protection - Environmental Safety Department related data, will be available.

### **International conventions**

The International Maritime Organization (IMO) is the body responsible for questions of a technical nature that affect navigation. The primary objectives of IMO are navigational safety and the prevention of pollution by ships. For the fulfilment of those objectives, the representatives of Member Governments attending the different technical meetings carried out in the Organization, prepare standards to be met by vessels engaged in international navigation. These rules are then implemented on international conventions adopted in diplomatic conferences of parties, which are convened by IMO once there is consensus to do so.

Since the adoption of its establishing Convention in 1958, the IMO has adopted a number of international instruments that cover many aspects relating to maritime safety and pollution prevention.

## National conventions

Argentine Coast Guard has materialised in the framework of environmental protection agreements with Governmental and Nongovernmental Organizations as set out below:

National Institute of Industrial Technology (INTI)

- Company Shell Capsa
- Secretariat of Natural Resources and Human Environment
- Argentina's Wildlife Foundation
- Ecological Foundation for the Defence of Life (FEDEVI)
- Natural Patagonia Foundation
- National University of La Plata
- National Directorate of Resources-National Subsecretariat of fuels
- Nuclear Regulatory Authority
- Secretariat of Environmental Policy of the Province of Buenos Aires
- Secretariat for Ports and Navigable Waterways
- Enterprise ESSO-SAPA
- Buenos Aires Port Management
- Argentine Museum of Natural Sciences "Bernardino Rivadavia" and National Institute for Research in Natural Sciences
- Terminals, Ports and various private companies "Area San Lorenzo-Rosario"
- Terminals, Ports, and various private companies "Area Zárate-Campana"
- Secretariat of Sustainable Development and Environmental Policy - National Commission on Space Activities (CONAE)
- National Commission of Atomic Energy (CENEA)
- Consortium of the Administering Commission of the Río de la Plata
- Civil Association "Best Listening"
- Government of the City of Buenos Aires.

## National Legislation

**Law No. 18,398** Organic Law of the Argentine Coast Guard establishes in Chapter IV - Functions: article 5, subsection (a. 23), as police of safety of navigation:

*"Take part with regard to the rules adopted to prohibit river, lake and sea water pollution by oil or other harmful or dangerous substances and verify compliance".*

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When the preventive aspects began to be regulated, the Prefecture saw the need for a specific body dealing with the topic, so the Department of Pollution and Dangerous Goods was created within the Directorate of Police of Safety of Navigation in 1979.

As from December 11<sup>th</sup>, 1995 and by provision of the Lord National Naval Prefect, the Department of Environmental Protection was created.

**Law No. 21,353:** Adopted the International Convention for Prevention of Marine Pollution by Hydrocarbons (OILPOL 54).

**Law No. 21,947:** Adopted the International Convention for Prevention of Marine Pollution by Dumping of Wastes and Other Matter (LC 72).

**Law No. 22,079:** Adopted the International Convention for the Safety of Human Life at Sea (SOLAS 74/78).

Chapter VII of the Convention governs, in the international order, the transport of dangerous goods by sea.

**Law No. 22,190:** This law introduced innovative aspects on the topic of prevention of pollution of the waters, and assigned important functions to the National Argentine Prefecture (P.N.A.) on the "polluter pays" principle (strict liability), which provides that the responsible ship, regardless of the appropriateness or not of the payment of the fine, must pay the expenses that the task of cleaning causes.

It also created the "concurrent liability" figure applicable in environmental matters, by which owners and companies to whom vessels causing pollution belong, are jointly and severally responsible for the damages produced, attentive to the principle established in the article 1109 and 1113 of the Civil Code, prescribing that who causes damage is obligated to repair or compensation.

With regard to the tasks of decontamination, this law assigns them to the P.N.A. in waters under national jurisdiction, except in the ports within the jurisdiction of the General Management of Ports, where this body should perform cleanup and develop reception facilities.

Among other functions assigned to the P.N.A., which were then regulated under Title 8 of the REGINAVER, are:

- Establishing the regime to which the discharge of oil and their mixtures shall comply.
- Determination of the rules of ship design and equipment.
- Regulating the operational rules for the prevention and fight against pollution.
- Investigation of contaminants, instruction of summaries and imposition of corresponding sanctions.
- Demand real or personal guarantee for payment of the fine, and ask the intervening Court for cleaning expenses.

Main obligations imposed on the vessels were:

- Respect download schemes and observe operational standards.
- Meet the standards of design and equipment.

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- Subject to a regime of inspection and certification.
  - Keep a log book of hydrocarbons.
  - Inform about own downloads and others that can be observed.

To train as regards inspections and certification of ships and other regulations, personnel of the Department Pollution and Dangerous Goods conducted courses in the World Maritime University (Sweden).

Such personnel began to dictate in 1986, Courses for Inspectors of Prevention of Pollution - MARPOL 73/78, where staff of the institution and national fellows and foreign are trained.

**Law No. 23,456:** Adopted the International Convention of Intervention on the High Seas to Prevent Incidents of Pollution (69 INTERVENTION).

**Law No. 24,089:** This law approved by the MARPOL Convention 73/78, provides that the Ministry of Defence, through the P.N.A., will be the authority on the application of the same.

Although this law is recent, within the jurisdiction conferred upon it by the Act No. 22,190, the P.N.A. had already been making progress in the implementation of international standards.

Indeed, when regulating the Law No. 22,190 by title 8 of the REGINAVE, the same rules of the MARPOL Convention were taken to the national order, applying them to our flag vessels engaged in international and national navigation. Thus Argentine ships that made international trips since 1983 to date, while our country had not yet acceded to the MARPOL, have not had problems in foreign ports as it has happened with other flags sub-standard ships.

**Law No. 24,292:** This law approved by the OPRC Convention establishes that the Ministry of Defence through the P.N.A. will be the authority on the application of the same.

Prior to the enactment of its regulatory decree, the P.N.A. carried out various activities in areas referred to in the said Convention, such as:

- Training of personnel: Beginning in 1978, courses were taught by personnel trained abroad (United States Coast Guard and Warren Spring Laboratory in the UK), on Control of Dumping of Pollutants (CONVERCON), having achieved numerous top and junior staff, and also foreign Fellows training.

- Regional agreements: There exists an agreement with Uruguay for incidents of pollution of the aquatic environment produced by hydrocarbons and other harmful substances from any source, signed in 1987 by Law No. 23,829.

- National Contingency Plan: PLANACON 90. It is currently in the process of updating.

The operational tasks related to the fight and control of pollution, are in charge of the Salvage, Fire and Pollution Service (SERSICO), dependent on the Directorate of Operations.

**Law No. 25,137:** Adopts the International Conventions of Civil Liability (CLC/69) and Constitution of a Compensation Fund for Damages Caused by Pollution by Hydrocarbons (FUND/71), modified by two protocols of 1992 versions.

**Decree No. 1886/83:** Regulates the Act No. 22,190 relating to the Argentine Coast Guard and introduces Title 8 of REGINAVE (Maritime, River and Lake Navigation System).



This regulation deals with the prevention of pollution from ships, and contains rules similar to those established by the MARPOL 73/78 and the 1972 London Convention.

It comprises the following chapters:

- Chapter 1 - The prevention of pollution of waters by hydrocarbons.
- Chapter 2 - The prevention of pollution of waters by dirty water.
- Chapter 3 - The prevention of pollution of water by wastes.
- Chapter 4 - The prevention of pollution of air by smoke and soot.
- Chapter 5 - The prevention of pollution by dumping of wastes and other matter.

**Decree No. 230/87**

- Chapter 6 - The prevention of pollution of waters by noxious liquid substances carried in bulk (Introduced into Title 8 through Decree No. 230/87).

**Decree No. 502/89:** Regulates the Act No. 22,079, organising the transport of dangerous goods in the waters under national jurisdiction. For the purposes of its technical implementation refers to the International Maritime Code for Dangerous Goods, to the International Code of Chemical Tankers, International Code of Gas Tankers and to the Code for the Transport of Solid, Dangerous Cargo in Bulk.

**Decree No. 962/98:** Regulates Law No. 24,292, was enacted on August 14<sup>th</sup>, 1998. It incorporates Chapter VII of Title VIII to the REGINAVE on the System of Preparation and Combat of Pollution by Hydrocarbons and Other Harmful Substances and Potentially Hazardous Substances.

**Decree No. 817/92:** Port activities. Maritime, River and Lake Transport. Pilotage, Piloting, Local Expertise and Trailer. Labour regimes.

**Law No. 24,093:** Law of Ports.

**Decree No. 769/93:** Regulates Law No. 24,093.

**Decree No. 890/80:** Harbour Security Regime (REGISEPORT).

**Management of quality**

The quality management requires a commitment that involves all levels of the organizational structure in question, leading its maximum level to a minimum to prevent tragic events.

In the 1980s, it became evident the declining standards of nautical competition and the lack of care and investment by some shipowners and constructors of ships.

In 1982, the ICS (International Chamber of Shipping) developed a safety management system by creating the "Code of Practices of Management for the Safe Operation of the Ship", whose application was optional for shipowners.

The occurrence in 1987 of shuttle ship "HERALD OF FREE ENTERPRISE" flag of the United Kingdom, caused the revision of the need to install a code that gave form to the security management because this accident was caused by human error in the operation of vehicle boarding gates.

On March 6<sup>th</sup>, 1987, the ship sailed from Zeebrugge (Belgium) with 460 passengers, 80 crew, 81 cars and 47 trucks to the Port of Dover (UK).

It capsized four minutes after leaving the port, causing the death of 150 passengers and 38 crew, being the reason for the accident the inadequate closure of the gate and the bow heading of the vessel when setting sail, manoeuvre it used to facilitate shipment of vehicles in port.

As a result of this accident various organizations, including the International Maritime Organization (IMO), the International Shipping Chamber (ICS) and the International Shipping Federation (ISF) worked together creating the ISM Code (by International Safety Management), which in 1994 was transformed into Chapter IX of SOLAS Convention (Safety of Life at Sea Convention), transforming from this.

There is a high percentage of sea claims produced by the influence of human factor due to inadequate training and errors of crew aboard, neglect, fatigue, etc., or by mistakes in the management of personnel in land (when aspects of security management are neglected by the shipping company).

It is recognized in multiple studies that more than 80% of maritime accidents are caused by human error. A study carried out by the Institute of Maritime Economy of Bremen (Germany) considered 330 maritime accidents in the period 1987 to 1991 involving a total of 481 merchant ships. This work concluded that 75% of them were due to: excessive workload and inadequate crew training. On the other hand, on an analysis of maritime claims made by the P & I of the United Kingdom for the same period, was highlighted that on the total of these claims, corresponding compensations amounted to a total of US\$ 778 million.

Another study carried out by an Advisory Committee on marine pollution in 1990 on 182 cases of spillage of hydrocarbons in waters of the United Kingdom, indicated that 66% of them were due to human error, also the Australian Ministry of Transport reported in 1992 that almost 75% of investigated accidents were due to human error, corresponding the others to structural or mechanical faults.

Another important issue is that due to the complexity of modern trade relations, in certain circumstances, the registered owner of a ship can agree contractually or otherwise for another person to take responsibility for the ship, in what refers to questions relating to maritime safety and protection of the environment, making it difficult in some cases that person's identification and consequent effective communication with the managers responsible for the operational management of vessels; this situation which is more serious in those companies that operate deficient vessels, led to the IMO to the establishment of the mentioned code, whose complete denomination is International Code of Management of the Operational Security of Ships and for Pollution Prevention.

Consequently, it is believed that the **human factor** is the crucial element in maritime safety and the protection of the marine environment, to that effect and although it is possible to take any number of technical agreements to raise standards for the construction of ships and equipment which they must wear, finally seafarers are responsible for the safe operation of ships and these will be as good as those men who form part of the crew and the company that manages it.

**Scope and application of the Code and the NGS**

The ISM Code applies to international maritime transport and was incorporated into the national maritime regulations by the Ordinance 8/97 Volume 3 DPSN of the Argentine Coast Guard and collects in this rule the letter and spirit of the resolution of the IMO A. 788 (19), Guidelines for the Implementation of the International Code of Security Management (ISM Code) by the Authorities.

The ISM Code is applied, as defines it Chapter IX of the SOLAS Convention, to:

1. The passenger ships, including high-speed passenger crafts by July 1<sup>st</sup>, 1998;
2. Tankers, chemical tankers, gas tankers, bulk vessels and high-speed cargo ships with gross tonnage equal to or greater than 500 by July 1<sup>st</sup>, 1998; and
3. Other cargo ships and mobile units for drilling sea inside of gross tonnage equal to or exceeding 500, before July 1<sup>st</sup>, 2002.

At the national level, the Argentine Coast Guard published Ordinance 11/97 Volume 2 DPSN, which sets its application to companies and their national ships carrying out national or border coastal shipping. In the case of companies operators of foreign-flag vessels and that under emergency rule, carry out national coastal shipping, they shall comply with the requirements of the International Code of Safety Management, and the Prefecture, at the request of its administration, may certify the system under the national regulations.

The rules of management of Ordinance 11/97 apply to passenger ships, cargo ships, including push convoys of total tonnage equal to or greater than 500 and to mobile drilling units sea inside of tonnage equal to or greater than 500.

Notwithstanding the foregoing paragraph, this Ordinance established a procedure by which through a risk analysis and the possible adoption by the company of control of risk measures, vessels of total tonnage less than 10 passengers can access the exemption of the system.

The deadlines for the implementation of the requirements of the Ordinance are established according to the type of vessel according to the timetable indicated below:

**Group 1:** Passenger ships, including high-speed passenger ships operating in areas of national maritime navigation, outer River Plate, including the port of Colonia (R.O. del Uruguay), as from July 1<sup>st</sup>, 1999.

**Group 2:** Tankers, chemical tankers, gas tankers, bulk ships and high speed crafts, of a total tonnage equal to or greater than 500, engaged in maritime, river, lake and harbour national navigation, as from July 1<sup>st</sup>, 1999.

**Group 3:** Passenger ships not included in Group 1, engaged in maritime coastal navigation, inlet or estuary, lakes, harbours, inland rivers and interior River Plate, excluding the Port of Colonia (R.O. del Uruguay), from January 1<sup>st</sup>, 2001.

**Group 4:** Other cargo ships not covered by Group 2 concerned to equal area of navigation and mobile units of drilling offshore, of a total tonnage equal to or greater than 500, from July 1<sup>st</sup>, 2003.

With respect to the regulation applicable in this case, we should refer to Annex 1 of this Ordinance that contains the management rule applicable to Groups 1, 2 and 4 previously defined. Meanwhile, Group 3 has a special rule contained in Annex 6 of this Ordinance, which provides the fundamental points of the national standard with some minor demands regarding this by the type of ship, company and operational practice that involves.

### **Conclusion**

We have developed the subject extending it to the practical activities and regulations of the maritime authority par excellence, the Argentine Coast Guard, in its preventive functions as well as also those functions before the occurrence of disasters and the rules applicable, international conventions ratified by the country as well as the internal rules which often reflect the guidelines of international security agreements. We quoted the applicable rules and enclosed listings that reflect the legal state of the international conventions which were ratified by the country and domestic laws which approved their use and application.

We must highlight the work carried out by the Argentine Coast Guard in these respects, however not having ratified our country important international conventions which could provide better handling for safety at sea in the event of disaster. In addition, the reality shows that disasters are increasing their magnitude as the development and evolution progresses, both industries and world trade, putting at risk security in its broadest sense.

We have set aside the private aspect, since the reality shows that globalization allows us to receive assistance and monitoring of all processes that do not deviate from those which we know exist in each of the different jurisdictions for events of importance, where insurance companies are involved, assistance and salvage companies, research companies, legal advice from law firms, and other human resources.

Our purpose was to provide a tour of the existing rules and practical legal procedures which our maritime authority applies, being this of direct use for the exercise of our professional development before extreme situations, enabling us to make better decisions for the security of all.

***Dr. Adrián J. Dabinovic***