PRESENTATION ON THE ACCIDENT OF THE M/V "SAN JORGE".

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Dr. Alejandro Sciarra Caubarrere

I. BACKGROUND

A) CHARACTERISTICS OF THE VESSEL

The vessel "SAN JORGE" was a Panamanian flag oil tanker, built in Spain in 1981, its hull was of double bottom reinforced for ice and had the highest qualifications of the Bureau Veritas, even to traffic with ports of the United States of America, a country known for its severity in the requirements regarding tankers, possessing all the modern instruments necessary for the navigation to which it was destined.

It had a gross registered tonnage (GRT) of 36,902 and a net tonnage (NRT) of 21,679, with a length of 244 meters, a beam of 32.30 meters and a depth of 18.60 meters. Her bow and stern draft was 12.15 meters.

B) FACTS PRIOR TO THE ACCIDENT

The "SAN JORGE" was coming from the port of Comodoro Rivadavia (Argentina), carrying a cargo of more than 57,000 tons of crude oil, bound for the port of San Sebastian (Brazil).

The vessel had planned to bunk up in the Delta Zone of the Río de la Plata, for which it had requested and received the corresponding authorization from the Uruguayan maritime authority (Prefectura de Maldonado), which had instructed it to anchor in the aforementioned Zone at 35º 08' S and 55º 09' W.

The Delta Zone is a delimited area, located in the Río de la Plata, approximately 15 miles SW of Punta del Este, which has been established in accordance with the rules of the Río de la Plata Treaty and its Maritime Front, for operations such as the one attempted by the tanker SAN JORGE.

The vessel was navigating approximately on a course of 25º in an area where both the Argentine charts that the tanker had been using, as well as similar Uruguayan charts, indicate an average depth of between 20 and 25 meters, that is, it was navigating to the east of the 20 meter isobath. Its speed was approximately 11 knots and its draft was 12.15 meters, which gave it a safety margin of between 8 and 13 meters between its keel and the seabed.

At 15.48 the vessel altered course when it was in position 35º 16' 07" S and 55º 06' 03" W, to take course 342º and proceed to the position assigned by the authorities in the Delta Zone.

C) ACCIDENT

Almost immediately after the change of course was initiated and when the vessel was approximately on a northerly course, it suddenly stopped abruptly, noticing strong contortions indicative of grounding. At 15:50 p.m. the engine was ordered to stop and it was found that there had been water leaks and that an oil spill was taking place.

Immediately the vessel communicates by VHF with the Punta del Este Control, informing of the news and proceeds to maneuver trying to escape from the grounding, giving all back force to do so, which in principle is unsuccessful. In addition, the bow tanks were moved to the stern, as far as their capacities allowed, in order to provide the bow with greater buoyancy and at the same time reduce the spill by transferring the crude oil to tanks that were not damaged.

At approximately 7:45 p.m., the ROA boat arrived on the scene to collaborate with the vessel. The vessel proceeded to make soundings on both sides of the vessel and at its stern, and it was found that on the port side there was a significant decrease in depth, indicating a depth of 12 meters.

On the same day of the accident, at 21:00 hours, the weather in the area registered NE winds of force 5/6, with waves of 2 meters high. Given these conditions and at 02:00 on February 9, the ROU-70 was ordered to return (these data have been extracted from the sea protest made by the Captain of the San Jorge, the navigation log and the preliminary report of the Presidency of the Republic).

D) POST-ACCIDENT EVENTS

After the accident, the National Authority ordered the start-up of the National Pollutant Spill Control System and the implementation of the contingency plans foreseen.

On the other hand, the Owners of the ship involved in the accident arrange the necessary measures for the release of the transported cargo, with the purpose, on the one hand, of reducing the spill and the consequent pollution and, on the other hand, to relieve the vessel in order to release it from its grounding.

The latter resulted on February 10, 1997 at around 3:00 p.m., when the vessel broke free and subsequently resumed its navigation, but now on a southerly course, trying to move away from the site to reduce the possibility of contamination.

During the time elapsed between February 10 and 17 of the same month, the maneuvers for the stowage of the cargo continued, until it was completely removed from the SAN JORGE, with the intervention of different tankers of

different capacities, at the same time that, on behalf of the Owners, the intervention of the specialized company Titan (Maritime Industries Inc. of Fort Lauderdale, Florida, U.S.A.) had been arranged.

It should be noted that, despite the success of the measures taken by both the State and the shipowners, the accident caused heavy losses to the shipowners, the shippers and their respective insurances. Thus, as a result of the important damages suffered, the vessel has constituted a total loss in the order of 13 million dollars, cargo has been lost as a consequence of the spill which has reached important figures, important expenses have been incurred for contracted freights and lost freights due to the use of tankers for the loading of the SAN JORGE, intervention of salvage companies, tugboats, etc., which originated a declaration of general average with a strong incidence on the interests involved in the accident.

II. LEGAL ASPECTS OF THE ACCIDENT

It should be noted that the aforementioned facts and the legal consequences they entailed were discussed out of court between the different parties involved (shipowners, insured parties, P&I, etc.) and the authorities in an atmosphere of close cooperation and great professionalism; and formally, by challenging the resolution issued on March 11, 1997 by the Directorate of the National Spill Control System imposing the payment of the expenses incurred as a result of the spill occurred as a consequence of the grounding suffered by the SAN JORGE.

In these administrative appeals, four main issues were raised:

A) Obligation of the State in the preparation of nautical charts and installation of aids to navigation;

B) Regulatory Framework on Oil Spill Prevention and Control;

C) General Liability System;

D) State Liability.

A) OBLIGATION OF THE STATE IN THE PREPARATION OF NAUTICAL CHARTS AND INSTALLATION OF NAVIGATIONAL AIDS

a) NATIONAL LEGAL PROVISIONS

The first antecedent is found in the Decree of January 22, 1916 which entrusts to the Directorate of the Navy:

"the hydrographic surveys and the valuation of the Uruguay and La Plata rivers and oceanic coast" (art.1º).

This provision emphasizes among its considerations that: "it is of public interest the preparation of terrestrial and maritime topographic charts, because of their importance to the development of the country and its defense" (Considering I).

Subsequently, by Decree of February 15, 1916, the previous resolution was complemented by specifying as tasks of the Directorate of the Navy, among others: "the survey of the bordering rivers, ocean coast and Merín lagoon", as well as "the publication of hydrographic charts, plans, etc. for the navigation of the national coasts" (section 1).

Art. 84 of Law No. 14,106 of May 14, 1973, as amended by Art. 92 of Law No. 16,320 of January 1, 1993, provides:

"The coordination and centralization of all plans, studies, information, research that the various bodies or commissions execute in relation to oceanography and hydrography, indicated in program 003 "National Navy" shall be carried out through the General Command of the Navy. To such effects, the National Navy is authorized to require from the official and private national organisms, the information and results of the oceanographic, hydrographic and marine meteorological surveys and investigations that they carry out, according to the norms in force, in the jurisdictional waters of the Republic and that includes those carried out by foreign or international organisms that act by order, agreement or authorization, with the purpose of increasing the maritime security in the nautical charts and publications that are published under its responsibility. The National Navy shall determine, through the competent Service, which shall be the charts and nautical publications, national or foreign, to be considered valid for maritime navigation in the jurisdictional waters of the Republic and which may be required by the corresponding control agencies".

The following conclusions may be drawn from these provisions:

(a) The obligation of the State, through the Navy, to determine which will be the national and foreign nautical charts and publications considered valid for maritime navigation in Uruguayan waters;

b) As a consequence of the above, the preparation and production of internationally valid nautical charts by the Uruguayan State.

Therefore, the Uruguayan State assumes the obligation to prepare valid cartography and to determine which are the valid national or foreign charts.

It is important to note that none of the referred provisions imposes on the Uruguayan State the obligation to carry out a comprehensive survey by means of sounding of the sea floor of its waters.

In other words, the internal legal provisions referred to do not enable to configure a legal liability of the State for the omission to identify the so-called "Bajo San Jorge" as long as the nautical charts in use have been made in accordance with universally accepted methods.

Regarding the "Aids to Navigation" we highlight Decree No. 490/988 of August 2, 1988. From this we can highlight the expression "NEW DANGERS" which is defined as that "which is used to describe recently discovered dangerous obstacles not yet indicated in the nautical documents" (art.73).

This affirms the principle that nautical charts are not documents of absolute reliability but legally expressions of an obligation of means of the State, that is, to use the systems and criteria for the preparation of nautical charts of universal validity, without assuming or guaranteeing the non-existence of obstacles to navigation not indicated on the charts.

b) INTERNATIONAL LEGAL PROVISIONS

- Treaty of the Río de la Plata and its Maritime Front: It does not contain express provisions on the preparation of nautical charts. However, there are provisions tending to commit the parties to develop in their respective coastal strips the aids to navigation in such a way as to facilitate navigation and guarantee its safety in the area of the Río de la Plata. As regards the Maritime Front, the obligation of the parties is to guarantee freedom of navigation (art. 72).

- United Nations Convention on the Law of the Sea (Montego Bay 1982): With the ratification of this Convention (Law 16,287 of July 29, 1992), the existing legal framework of the 1969 legal declaration (Uruguayan Territorial Sea of 200 miles) is modified, adopting the concepts and terminology of the Convention (Territorial Sea, Contiguous Zone and Exclusive Economic Zone). This aspect is interesting because the determination of the Uruguayan territorial sea according to the Convention and in harmonic interpretation with the Treaty of the Río de la Plata and Maritime Front would place the "Bajo San Jorge" in Uruguayan territorial waters (in spite of the reduction of the territorial sea area with respect to 1969). However, we would like to point out that this does not translate into a change in the State's obligations with respect to the preparation of charts and the provision of navigational assistance, with respect to those it already had under national regulations. In fact, I would like to highlight the following provisions of the Convention that are relevant to the issue at hand:

- "Subject to this Convention, ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea" (art. 17).

- "The coastal State may, in accordance with the provisions of this Convention and other rules of international law, adopt laws and regulations concerning

innocent passage through the territorial sea, on all or some of the following matters: a) safety of navigation and regulation of maritime traffic" (art.21).

- This provision gives legal basis to the determination of specific areas of operations, as well as gives the right (but does not impose the obligation) to regulate such transit (as was the case of the Prefecture in giving an anchorage coordinate for the area of operations).

- "1. The coastal State may, where necessary in view of the safety of navigation, require foreign ships exercising the right of innocent passage through its territorial sea to use such sea lanes and traffic separation schemes as that State may have designated or prescribed for the regulation of the passage of ships. In particular, the coastal State may require that tankers, nuclear-powered vessels and vessels carrying nuclear and other inherently hazardous or noxious substances or materials limit their passage to such sea lanes. In designating sea lanes, and in prescribing traffic separation schemes in accordance with this article, the coastal State shall take into account: (c) The special characteristics of particular vessels and channels" (art. 22).

In the present case, let us recall that the vessel was authorized to proceed to a prefixed point in the area of operations, but was not ordered to follow a certain course nor does the Uruguayan chart show a particular channel or sea lane to access such anchorage point.

- "The coastal State shall make known in an appropriate manner all dangers which, according to its knowledge, threaten navigation in its territorial sea" (art. 24, paragraph 2°).

This provision imposes an obligation on the coastal State to publicize, to make known, by means suitable for seafarers, the existence of obstacles to navigation.

This obligation is accompanied by another: the obligation to draw up or consolidate foreign nautical charts, to maintain systems of aids, etc. Such, in my opinion, is the content of this obligation. As can be seen from the interpretation of the same, it cannot be concluded that the same imposes on the coastal State the duty to carry out soundings and detect any possible or certain obstacle to navigation located in its territorial sea. On the contrary, the rule clearly qualifies this obligation to inform the State by referring to those dangers that "to the best of its knowledge" exist or threaten navigation.

The argument is reinforced that it is not an obligation of result for the State, i.e., qualified as the need to relieve all maritime hazards and if they do not respond for the harmful consequences.

We are facing an obligation on the part of the State not to be reticent, that is, to know the danger and not to publicize it. This would generate liability.

From this a question arises: Should the State have legally carried out a specific hydrographic survey activity, for example: direct sounding?

It could be argued that the area where the "Bajo San Jorge" is located is within the possible access routes of the vessel from Argentina to the specific area of operations.

It was understood that it was not. There is no legal obligation of the coastal State other than to correctly prepare or consolidate nautical charts and to disclose any information it receives or knows about dangers to navigation.

In short, the reference in the legal text to hazards "to the best of its knowledge" excluding any obligation of result (i.e. to detect any hazard) and instead exonerating the State which with due diligence would have drawn up the nautical charts.

- International Convention on Civil Liability for Oil Pollution Damage 1969 (C.L.C.) and International Convention on Compensation for Oil Pollution Damage 1971 (FONDO): Although these Conventions were not in force at the time of the accident since they were ratified by Law No. 16,820 of April 23, 1997, it is interesting to note that they reaffirm that the failure to identify an obstacle to navigation on nautical charts does not exonerate liability. It maintains the concept of the State's obligation to produce and maintain valid charts, even if they are not entirely based on soundings. The activity of the coastal State, on the contrary, must be directed to the correct functioning of lights and other aids to navigation. State negligence or "lack of service" is penalized by attributing to it the character of an exonerating circumstance of liability for the vessel. It should be noted that the Uruguayan legal-administrative system defines "aid to navigation" as: "the visual, acoustic or radioelectric device intended to ensure the safety of navigation and to facilitate its movements" (art. 8 of Decree 490/988). This concept excludes the making and updating of nautical charts.

c) ADMITTED METHODOLOGY FOR THE MAKING OF NAUTICAL CHARTS

According to the international regulations of the International Hydrographic Organization (I.H.O.), nautical charts can be made on the basis of two systems:

a) Hydrographic survey or sounding;

b) Compilation of data from other nautical charts.

In sum, the compilation is a technical method adjusted to law, and therefore the elaboration of a nautical chart based on such system would not cause the State to incur in the deficient provision or non-provision of the service, cause to demand the responsibility of the State.

This case was what happened with the chart where the obstacle known as "Bajo de San Jorge" should have been registered. In fact, the area where the incident was recorded is on chart No. 3, which dates from 1981 and was drawn up on the basis of a compilation of other nautical charts and certain information provided by fishing vessels that operated in the area.

B) REGULATORY FRAMEWORK ON PREVENTION AND CONTROL OF OIL SPILLS

Before going into the subject of civil liability in general and, in particular, oil pollution, it is worth mentioning briefly the set of national and international rules that regulate this matter.

These provisions are basically the following:

- MARPOL Convention (1973 and Amendments 1979 and 1984);

- International Convention on Pollution Preparedness, Response and Cooperation (London 1990);

- Cooperation Agreement between the Oriental Republic of Uruguay and the Argentine Republic regarding pollution of the aquatic environment (Buenos Aires 1987);

- United Nations Convention on the Law of the Sea (Montego Bay 1982);

- Law No. 16,688 of December 22, 1994, on the Regime for the Prevention of Surveillance of Pollution of Waters under National Jurisdiction;

- International Convention on Civil Liability for Oil Pollution Damage (1969);

- Decree of August 19, 1980, which establishes the Regulations for the prevention of oil pollution of the sea due to ship operations.

C) GENERAL SYSTEM OF LIABILITY

The system of the Civil Code (arts. 1319 to 1332 of the Civil Code), enshrines the patrimonial liability arising from fault, i.e. the lack of due diligence in the actions of the offending agent, which is the direct origin of the damage to the victim.

The general system of Uruguayan liability requires the conjunction of the following elements: a) the commission of a wrongful act; b) that has caused damage; c) the existence of a causal link between the wrongful act and the damage; and, d) the fault of the offender.

In normal cases, the tortfeasor may exempt himself from liability by proving that he has acted with all due diligence, i.e. the absence of fault.

Certain circumstances that condition the agent's act, overriding it, are also exonerating of liability. These causes are: a) the act of God or force majeure; b) the act or fault of the victim; and, c) the act or fault of a third party.

In these exonerating circumstances it is concluded that there is not a complete causal link between the damage and the offender's actions, since there are elements other than the offender's that contribute totally or partially to the production of the damage. Our country admits the partial incidence of these exonerating circumstances.

Objective Liability: There are cases in which the liability system escapes these parameters. Indeed, in our country there are rules that establish types of liability different from the general regime. Among them, the cases in which the liability of the agent is objective stand out. This means that the obligation of the responsible party to make reparation is independent of his actions, but is linked to the specific legal situation in which the subject finds himself. No judgment is therefore made on the conduct of the subject, but his liability arises from his objective position with respect to the damage occurred.

An example of such exceptional liabilities, characterized as objective, is exactly the special rule applicable to the incident, which is article 10 of Law 16.688 on the Regime of Prevention and Surveillance of the contamination of waters under national jurisdiction, which textually expresses: "Obligation to repair. Without prejudice to the fine that may eventually be applied as a consequence of the preliminary investigation referred to above, the owners or operators of vessels, aircraft operators, naval artifacts, installations established on land or underwater platforms that have caused the pollution, shall be jointly and severally and objectively liable, whether or not the violations established in the respective articles of the present law have been committed, for the payment of the expenses or for any other service that the General Command of the Navy or any other intervening agency should have carried out as a consequence of the event. All the aforementioned persons shall also be jointly and severally liable for any fines. The hypothesis established in section 14 is excepted" (referring to warships of the National Navy).

This regulation provides for the strict liability of the owners or shipowners in cases of pollution of Uruguayan territorial waters, as in this case, in which there was an oil spill, without indicating any type of exonerating circumstance.

Since in our country there is no organic regime and structure of strict liability, for the correct interpretation we will have to resort to the most received doctrines, as well as to the comparative legislation, fundamentally that which inspired the sanction of the mentioned law. As regards the doctrinal construction of strict liability, the theory has evolved from the middle of the last century to the present.

In the first instance, it arises from a presumption of fault, or from what is called "culpa in vigilando" or "culpa in diluyendo" (liability of the father for the acts of the

son, of the owner for the damage of things or animals of his property, of the employer for the damage caused by the employee, etc.). We see that, in this case, there is still the idea of own fault, which is linked to the harmful action of the agent.

In a second stage, they develop the idea of strict liability as a consequence of the generation of a social risk in a profitable activity. It is said that an elementary reason of social solidarity imposes that the economic losses caused by damages be compensated by those who generated such risk of damage in an activity from which profits are obtained. This theory served as the basis for the employer's liability for occupational accidents, occupational diseases. If we stop at this stage, we can see that the idea of fault still underlies in the generation of the risk, but the seed of true strict liability arises, that is, liability without fault.

In a third stage, the legislative technique of protection of strict liability is bifurcated in two ways:

a) those provisions that award liability without giving at all the possibility of exemption for extraneous or fortuitous causes. This is the true strict liability, which arises fundamentally in the provisions regulating maritime and air navigation, and which establish in great detail the conditions under which it operates. In general, this type of liability is combined with the requirement of compulsory insurance and with the economic limitations of claims.

b) Those provisions that award liability on the basis of a true presumption of fault. In these cases proof to the contrary is admitted, fundamentally that of the fortuitous event and that of the victim's fault, which are based on recognized general principles of legal action, i.e. that no one is liable for the fortuitous event to which he has not given cause (thus affecting the causal link between the damage and the agent's action) and that persons are liable for the damage they have caused, and not for the damage of third parties or for the damage that the victim himself infringes.

As we can see, it is a matter of casuistry analysis to establish when we are facing a strict liability and when we are facing a presumption of fault, and in any case, which exonerations are admissible in a claim such as the present one.

Unfortunately, the legal regulation in force at the time of the accident is totally silent on this matter.

Therefore, it is useful, as an interpretation criterion, to analyze the rules of the 1969 Convention on Civil Liability for Oil Pollution Damage (C.L.C.), which, as previously stated, was approved by our country after the accident (and can therefore be considered as the most recent doctrine).

This Convention establishes that liability only ceases in case of natural disaster or state of war; in case of sabotage by third parties; and in case of failure to maintain navigational aids. None of the three specific hypotheses are applicable to the case. The lack of maintenance of aids to navigation, as already expressed, does not include the making and updating of nautical charts.

It remains to be analyzed if in a case of strict liability, it is possible to adduce as a defense the concurrence of fortuitous event or force majeure. In the general regime established in the Civil Code it is expressed in art. 1322: "No one is liable for damage arising from an act of God to which he has not given cause".

Gamarra tells us that "In general there is agreement to characterize fortuitous event or force majeure (synonymous expressions) as an event alien to the offender, irresistible and unforeseeable, which causes the damage. This position has received practical expression in the judgment of the 4th Civil Court of Appeals (Tribunal de Apelaciones en lo Civil de 4º Turno /ADCU VIII, 321), which has held that they can only reside in circumstances external to the thing, defects, vices or deterioration of the damaged thing not having such virtuality. This interpretation is based on the notion of "extraneous cause", understood as exteriority with respect to the alleged offender (ob. cit. p. 359 and following) provided for in section 1322 of the Civil Code: "No one is liable for the damage resulting from an act of God to which he has not given cause".

Gamarra in his Tratado de Derecho Civil Uruguayo, T. XIX, page 357 states that the Uruguayan codifier has placed the exonerating circumstance in the scope of the causal relationship, in the causal nexus, adding "... the fortuitous event proves the inexistence of a causal relationship between the agent's conduct and the damaging event. What has just been said makes it possible to clearly distinguish the fortuitous event from the absence of fault".

Faced with the doubt that may arise as to whether the exoneration of the fortuitous event works in cases of strict liability, Gamarra himself gives us the affirmative answer, saying: "What was said about the fortuitous event and the absence of fault has repercussions as to the basis of liability, since, when only exoneration by fortuitous event is allowed, this will necessarily be objective and subjective, when among the releasing circumstances there is the absence of fault".

Regarding the nature of the unlawful act, Gamarra, after studying the different definitions and criticizing the opinion of Peirano Facio, who opted for a broad meaning of the concept, saying that not only unlawful is equivalent to illegal, but also unlawful is the act that goes against good customs, public order, morality and even against general duties of prudence, Gamarra tells us that unlawfulness is a fact: the invasion of the legal sphere of others, which injures rights, interests or legally protected situations.

The existence of the now called Bajo San Jorge, which constitutes a case of force majeure or fortuitous event, was admitted in the preliminary report prepared by the Presidency of the Republic, who expressed it in Chapter I "Introduction",

paragraph "b", when mentioning that "the existence of an obstacle, which causes an accident such as the one occurred on this occasion, is internationally defined as a "peril of the sea". The accident itself, which occurs as a result of the presence of this "peril of the sea", is defined, according to an internationally accepted term, as an "an act of God". As the phrase implies, they are fortuitous events, which do not depend on human will or action".

Other authors consider that there is an absolute identification between fortuitous event and absence of fault, which results in the consequence that as strict liability is a liability without fault, the proof of fortuitous event, as well as the absence of fault are totally out of the question, because even in that case it is liable.

In comparative legislation, even at the level of International Treaties, the situation is different. First of all, it must be established that all the doctrine points out that the subject of strict liability and its exonerating circumstances, being an exceptional positive law, has a rich casuistry that is very difficult to systematize. Nevertheless, the laws that impose strict liability in cases of maritime and air navigation, which are based on the "created risk" and the "risk-benefit" relationship, do not admit exonerating circumstances even in case of fault or acts of third parties (e.g., other passengers, sabotage) without the possibility of exonerating circumstances, even in case of fault or acts of third parties (e.g., other passengers, sabotage). other passengers, sabotage) without prejudice of establishing the right of repetition of the owners or operators of the ships (this is what Marcel Planiol points out when commenting the law of air navigation of May 31, 1924, in "Tratado Práctico de Derecho Civil Francés", Volume VI, Havana, 1946). In the same sense, Francesco Messineo when commenting on the maritime and air navigation laws of Italy in "Manual de Derecho Civil y Comercial".

As far as Uruguayan jurisprudence is concerned, there is a lack of precedents in cases of strict liability. In liability cases under the general regime of the Civil Code, the Courts have generally been reluctant to admit this exonerating factor, mainly due to the absence of proof, as well as the absence of the distinctive characteristics of the same, with respect to which they are very rigorous.

Fortuitous event (or force majeure) is defined as an event external to the offender, irresistible and unforeseeable, and which causes the damage. The characteristics are therefore: external to the offender, unforeseeability, irresistibility and extraordinariness.

Of the aforementioned characteristics, extraordinariness and unpredictability are the most debatable elements, insofar as maritime navigation, as well as air navigation, are considered risky in themselves, which is why objective liability has been established for these cases in favor of the victim of the damage who is trying to obtain compensation. It is possible, therefore, that the perils of the sea are not considered fortuitous events but foreseeable, even in spite of their irresistibility.

D) LIABILITY OF THE STATE

It is enshrined in Article 24 of the Constitution which provides: "The State, the Departmental Governments, the Autonomous Entities, the Decentralized Services and in general, all State organs, shall be civilly liable for the damage caused to third parties, in the execution of the public services entrusted to their management or direction".

The national doctrine and jurisprudence are unanimous in considering that the liability of the State is autonomous with respect to that legislated in the common law. It is a different matter to determine whether or not it has the same guiding principles.

A sector of the national doctrine maintains that the liability of the State is objective, since the constitutional rule does not require unlawfulness or fault of the agent. This doctrine only requires the concurrence of three essential requirements: a) fulfillment of a state activity; b) existence of a damage suffered by the person administered; and, c) causal relationship between one and the other. Once these elements are proven, the indemnity obligation is established as a matter of law, not being necessary, therefore, the proof of unlawfulness or fault in the State's actions (Prof. Justino Jiménez de Aréchaga in "La Constitución Uruguaya de 1952", Dr. Sergio Deus in "Responsabilidad Civil del Estado", Dr. Jorge Peirano Facio in a lecture given at the Centro de Estudios Judiciales del Uruguay, Dr. Martín Risso in "Responsabilidad del Estado").

Based on what was said about the "fact of the victim", especially about the omission in which the State would have incurred, through the operation of the SOHMA, by not having complied with its legal obligation to carry out a diligent work in what has to do with the hydrographic survey in areas of undoubted priority, due to the maritime traffic they register, it could be concluded that the stranding suffered by the SAN JORGE, on a reef that should have been detected if the tasks assigned to the agency had been fulfilled, is a direct and unavoidable consequence of such omission, which would constitute the "fact of the victim", in this case the Uruguayan State.

Another sector, majority and also very prestigious, originated in Prof. Enrique Sayagués Lazo (Tratado de Derecho Administrativo, Tomo I, p. 613 et seq.), consider that the liability of the State requires the existence of a "lack of service", understood as a fault or wrongfulness in the administrative action. These authors consider that the liability of the State is not objective, but requires for its configuration the proof of the referred "lack of service".

Public Service" is defined as any state activity whose purpose is to satisfy a collective need, by means of services directly and immediately addressed to individuals.

A "lack of service" is defined when the service provided by the Administration did not work, worked poorly or late. In these cases, and in the existence of an

abnormal damage, the State's obligation to compensate arises. In this regard, Sayagués Lazo, in the aforementioned work, states: "Admitting as a general principle that the administration has the obligation to ensure the proper functioning of administrative services, the logical corollary is to affirm its liability when, due to irregularities in those services, it causes damage to third parties. Therefore, the liability of the administration arises if the service did not function, if it functioned with delay, or if it functioned irregularly, either due to defective organization of the service or due to illegality".

Our jurisprudence is mostly inclined towards the latter thesis, considering that the condemnation of the State requires the configuration and proof of the lack of service, understood as the unlawfulness and fault in the execution of public services.

It is important to emphasize that, both in the thesis of strict liability of the State and in that which affirms the subjective nature of the same, the unquestionable existence of a public service is an essential requirement. Considering that the public service to be performed by the Maritime Authority was the preparation and updating of nautical charts, using internationally accepted methods, and that there was no obligation to carry out soundings and surveys, it could be argued that there was no "lack of service".