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Liability and Compensation
Regime for Oil Pollution Damage
under International Conventions

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Summary

Before the twentieth century, there was little concern with ship-source oil pollution at sea. Increase of shipping activities and in particular happening of disasters, the most important of which is the *Torrey Canyon*, alerted the thinking of legislators as to seriousness of the problem of marine pollution. The result of their efforts in private law domain was creating the Civil Liability Convention at the first stage which provides liability and compensation regime for oil pollution at sea. Later on, the second tier of the regime was provided by adoption of the Fund Convention which was designed to link closely with the CLC, to and its purpose is to pay compensation to victims of oil pollution damage at sea in cases where the amounts recoverable under the CLC are inadequate. The final step to provide a comprehensive compensation regime was taken by adoption of Bunkers Convention whose purpose is to ensure that adequate compensation is available to the victims of damages caused by oil spills from bunkers.

The CLC is considered as a revolutionary regime comparing with the traditional remedy of common law of torts by imposing strict liability and compulsory insurance on the shipowners. Since such regime was rather successful in proving compensation to victims, the Fund Convention and Bunkers Convention follow the patterns of the CLC in many aspects.

The insurance industry and in particular the P&I Clubs have an effective role in achieving a comprehensive regime aimed by the international conventions. Hence, this thesis examines the main features of the concerning conventions as well as the role of P&I Clubs in providing the compensation regime.

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Abbreviations

CLC	Civil Liability Convention
CMI	Comité Maritime International
EEZ	Exclusive Economic Zone
EU	European Union
FPSO	Floating Production Storage and Offloading
FSU	Floating Storage Unit
HNS	Hazardous and Noxious Substances
IMCO	Inter-Governmental Maritime Consultative Organization
IMO	International Maritime Organization
IOPC	International Oil Pollution Compensation
LLMC	Convention on Limitation of Liability for Maritime Claims
LOF	Lloyd's Open Form
MARPOL	Convention for the Prevention of Maritime Pollution from Ships
MEPC	Marine Environment Protection Committee
OBO	Oil/Bulk/Ships
P& I	Protection and Indemnity
SCOPIIC	Special Compensation P&I Clubs
SDR	Special Drawing Rights
TOVALOP	Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution
UNCLOS	United Nations Convention on the Law of the Sea
UN	United Nations

1 Introduction

1.1 Background

Before the twentieth century, when shipping was not frequently used for the purpose of international trade, global attention was not attracted to vessel-source pollution at sea. In addition to increase of shipping activities worldwide, technological developments resulted in the increment of various cargoes some of which were potential threats to the marine environment once released into sea.¹

Although some steps were taken by international legislators to prevent marine pollution damage, the most important of which was the International Convention for the Prevention of Pollution of the Sea by Oil 1954 (OILPOL 1954)², the process of development of legislation for oil pollution damage was rather slow in comparison with the growth of maritime transportation and increase in sizes of oil tankers, and subsequently threat to the marine environment. There was rather little concern with oil pollution at sea until the *Torrey Canyon* disaster in 1967. The catastrophe, among other minor incidents, alerted the thinking of policy makers, legislators and the public in general as to the seriousness and urgency of the problem of marine pollution.³ This is the reason why the name of this ship is associated with the inception of national and international efforts to improve the compensation regime for oil pollution damage.⁴

The disaster quickly provoked a response from the authorities both in public and private law domains. By the autumn of 1967, the IMO had started working on two parallel conventions: 1. The Intervention Convention which

¹Wang Hui, *Prevention and Compensation for Marine Pollution*, in *Maritime Pollution Liability and Policy: China, Europe and the US*, edited by Michael G. Faure, Han Lixin & Shan Hongjun, Wolters Kluwer, 2010 at p 15

²Entered into force on 26 July, 1958, amended in 1962, 1969, and 1971

³R.R Churchil, A.V Lowe, *The Law Of the Sea*, Manchester University Press 1999, at p 328

⁴T. Falkanger, H.J. Bull, L. Brautaset, *Scandinavian Maritime Law: The Norwegian Perspective*, Universitetsforlaget AS, 2004, at p 197, For more details about the incident see chapter 2

concerned the right of coastal state to take preventive measures where an incident on the high seas results pollution damage 2. Civil Liability Convention 1969⁵ which regulated the liability regime of oil pollution damage.⁶

The 1969 Civil Liability Convention represented a radical change from the previous regimes by imposing strict liability on the owner of oil tankers for pollution damage regardless of fault.⁷ In 1971, another instrument called Fund Convention⁸ was adopted which was designed to link closely with the 1969 CLC. The purpose of the Fund Convention was to pay compensation to victims of ship-source oil pollution damage in cases where the amounts recoverable under the 69 CLC were inadequate.⁹ The 1969 CLC has been updated by two Protocols in 1976 and 1992 which resulted in the 1992 CLC. The Fund Convention was also revised in 1992 and formed the 1992 Fund Convention.¹⁰ These changes took place following other disasters the most important of which was the *Amoco Cadiz*¹¹ in 1978, when the available compensation regime failed to recover the damage.¹² More amendments to the Fund Convention were made since other incidents hit the coasts of Europe particularly with the *Erika*¹³ in 1999 and the *Prestige*¹⁴ in 2002. Subsequently, a Supplementary Fund as a voluntary third-tire system for oil pollution liability was established to provide further compensation in addition to the coverage available under CLC and Fund Convention.¹⁵

⁵ International Convention on Civil Liability for Oil Pollution Damage, 29 November 1969, Came into force on 19 June 1975

⁶ *Ibid*

⁷ C. De La Rue, C.B Anderson, *Shipping and the Environment: Law and Practice*, LLP, 1998, at p 16

⁸ International Convention on the Establishment of an International Fund fo Compensation for Oil Pollution Damage, 18 December 1972, came into force on 16 October 1978

⁹ *Supra* note 7, at p 20

¹⁰ International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992, 27 November, 1992, came into force on 30 May 1996

¹¹ On 16 March 1978 the *Amoco Cadiz*, carrying 220,000 tons of crude oil suffered a failure of her hydraulic steering gear off the Brittany coast. For further details see *Supra* note 7, at p 31

¹² *Supra* note 7, at p 31

¹³ See <http://www.iopcfund.org/erika.htm>, available on 01/02/2011

¹⁴ See <http://www.iopcfund.org/prestige.htm>, available on 01/02/2011

¹⁵ Frank Maes, *Marine Resource Damage Assessment: Liability and Compensation for Environmental Damage*, Springer, at p 267

The final step to provide an effective compensation regime for oil pollution damage at sea was taken in 2001 by adoption of the International Convention on Civil Liability for Bunker Oil Pollution Damage¹⁶, known as the Bunkers Convention. It was adopted to ensure that adequate compensation is available to the victims of damage caused by oil spills from bunkers.¹⁷

1.2 Purpose and Delimitations

The purpose of this thesis is to examine the process of development of the international statutory regime regarding liability and compensation regime for oil pollution damage and the efforts which have been expended by legislators in order to achieve an ideal compensation regime. In addition, a further objective of the thesis is to critically analyse the current international regime relevant to the matter, identify the corresponding legal problems and finally establish whether or not it provides adequate compensation for the victims of oil pollution damage.

The discussion of the thesis is limited to consideration of the international liability and compensation for damage to the marine environment resulting from oil pollution. Hence, only the CLC, Fund Convention and Bunker Convention are relevant, and the international convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea (HNS) falls outside the ambit of the thesis.

It should be noted that special attention has been paid to distinguishing features of the mentioned conventions such as scope of application, strict liability, channeling of liability, limitation of liability, compulsory insurance and direct action against insurers.

¹⁶Adopted on 23 March 2001, Entry into force 21 November 2008

¹⁷[http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-on-Civil-Liability-for-Bunker-Oil-Pollution-Damage-\(BUNKER\).aspx](http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-on-Civil-Liability-for-Bunker-Oil-Pollution-Damage-(BUNKER).aspx), available on 01/02/2011

1.3 Methodology and Materials

In order to achieve the main objectives of the thesis, various sources such as international instruments, legal texts, journal articles, preparatory works on the relevant conventions which mainly comprise IMO documents and some materials available online have been used.

The thesis follows the traditional legal approach while searching through literature such as articles and text books in order to describe the obtained knowledge by clear language. The main chapter of the thesis which examines the relevant conventions namely 1992 CLC, Fund Convention and Bunkers Convention is considered to be of an analytical nature while examining the related provisions. However, since the Fund Convention and the Bunkers Convention are largely modeled on the Civil Liability Convention, a comparative method has been used in certain parts of the thesis where comparison of the mentioned conventions is needed.

In order to provide sufficient background knowledge, some parts of the thesis are of a descriptive nature.

1.4 Disposition

Apart from the introductory and conclusive parts, the thesis comprises three main chapters, each divided into several sub-chapters. The thesis starts with describing the origins of the liability and compensation regimes for oil pollution damage and explaining how the statutory regime available at present has reached the level of a strict liability-based system in chapter two. For this purpose, the traditional remedy of the common law of torts has been considered first. Subsequently, the statutory regime which is divided into two categories of fault based liability and strict liability has been discussed. Additionally, a brief description of the *Torrey Canyon* incident has been presented in order to realize the most important reasons which prompted international legislators to revise the law for oil pollution damage.

Chapter three which is devoted to the analysis of the conventional provisions regarding oil pollution damage comprises three substantial sub-chapters. Each is dedicated to examining the main features of the related international conventions respectively, the Civil Liability Convention 1992, the Fund Convention and the Bunkers Convention.

Since the examination of the law regarding oil pollution damage cannot be complete without consideration of possible insurance coverage of related liabilities, the thesis examines the role of the insurance industry regarding oil pollution liabilities ,particularly, the coverage for oil pollution risks provided by the P&I Clubs in chapter 4 prior to the conclusion.

2 Liability Aspects of Oil Pollution Damage

The nature of the claim based on compensation for damage is a claim in tort, and damage that derives from oil pollution at sea is known as a maritime tort.¹⁸ In general terms, the liability regimes for oil pollution damage derive from the law of torts.

2.1 Remedy of Common Law of Torts

In English law, the common law of torts provides the remedy for oil pollution damage. By trespassing the loss of the victim of oil pollution damage to the perpetrator of the loss, the common law of torts provides for compensation, which is its main objective, for the victim.¹⁹

Prior to the conventions relating to liability for oil pollution damage, the maritime claims for environmental damages in English cases have been based on actions in negligence, nuisance and trespass.²⁰

In the general law of torts, negligence is a device to protect the victim from personal injury, damage to property and economic loss. As a rule, all kinds of negligence torts include three essential features. First, the defendant should be bound by a duty of care. Second, he must be in breach of the duty of care. Finally, the breach of that duty must result in damage to the plaintiff.²¹ Consequently, a victim of oil pollution is entitled to institute an action in negligence provided that the damage results from the violation of the duty of care against the plaintiff.

¹⁸ P.K. Mukherjee, *Labour Developments in Fishing Industry*, Proceedings of an international symposium held at Rimouski, Quebec, November 3 and 4, 1983, Organized by: GERMA (Group d'étude des ressources maritimes) and CIRAST (Centre d'intervention et de recherche pour l'amélioration des situations de travail), Special editor: Jean Louis Chaumel

¹⁹William Lloyd Prosser, W. Page Keeton, Dan B. Dobbs, Robert E Keeton, David G. Owen, *Prosser and Keeton on torts*, West Group 5th edi. at p 591-592

²⁰Gotthard Gauci, *Oil Pollution at sea : Civil Liability and Compensation*, Wiley, 1997 at p 11

²¹Elliott, Catherine & Quinn, Frances, *Tort Law*, 7th edition, Elliot & Quinn Series, at p 18

In English law, torts of nuisance may be actionable in public or private law. Although in most cases public nuisance is deemed as a crime, sometimes it is possible for the victim to sue in tort. In these occasions, a claim for damages may be made by an individual who has been suffered by proving that the special damage is beyond what has suffered by the general public.²² Private nuisance is defined as illegal interference with one's land in use or enjoyment or any other right which is connected to his property interest. In order to make an action in tort for private nuisance, it is necessary that the nuisance results from the defendant's land. Therefore, it is not likely to be proven in the case of oil spill from a vessel.²³

In tort law, three categories of trespass have been defined: Trespass to person, goods and land. Action in tort of trespass to land is the one which is made by and unreasonable interference with the possession of land. The three elements which should be taken into account in trespass to land is first that the claim is related to land which is in the possession of the plaintiff, and has been interfered with by the defendant.²⁴ Nevertheless, trespass to land has been the basis of many English cases related to oil pollution damage.²⁵

Although the law of torts has been the remedy for many defences in English cases, it was found not enough to compensate a victim of oil pollution damage. A well-known example of a legal case related to ship-source oil pollution in which the remedy of torts was not adequate to reimburse the damages suffered by the victim is *Southport Corporation v. Esso Petroleum*.²⁶ In this case, the master of the vessel called *Inverpool* faced bad weather but he continued on course and the vessel ran aground. Then, he jettisoned a large amount of oil cargo to the sea in order to save the crew. The Southport Corporation claimed against the vessel and her master on the basis of torts of trespass, nuisance and negligence. The different judges gave

²²*Ibid*

²³*Supra* note 18

²⁴*Supra* note 21, at p 340

²⁵ *Supra* note 20 p 12

²⁶[1955] 2 Lloyd's Rep. 655; [1956] A.C 218 (HL)

contradictory opinions about the application of these causes of action. And this, illustrates the problems with the application tort law to oil pollution damage. *The Wagon Mound*²⁷, was another case in which the vessel was being bunkered close to the ship-repairer's wharf. The oil spill took place from the ship and caused the work stoppage of welding on the wharf for a while. After they started to work again, a fire broke out in the wharf and destroyed the belongings of the repairer. The ship-repairer brought an action in the torts of negligence and nuisance against the vessel. In the Privy Council's decision, the claim of negligence was dismissed by an argumentation that a person should be held liable if the damage is reasonably foreseeable. The claim of nuisance was remitted to the Court of New South Wales.²⁸

2.2 Remedy of Statutory Regime

In relation to ship-source oil pollution, there are also statutory remedies for environmental damage which are more advantageous to the victim. Statutory regime may be on the ground of fault to be proven presumption of fault or strict liability. In this section, the two bases of a statutory remedy will be discussed.

2.2.1 Fault Based Liability Regime

Fault based liability is more favorable to the defendant compared with the traditional tort law as mentioned above. In this method of liability regime, three elements of fault, damage and causation are required in order to make the plaintiff entitled to be compensated for the damage. In other words, the person who causes the damage should be in fault. The original TOVALOP contract contained rules fault based liability.²⁹

²⁷ [1961] Lloyd's Rep. 1 (P.C)

²⁸ *Supra* note 20, at p13-16

²⁹ Herman Cousy and Dimitri Droshout, *Unification of Tort Law: Fault*, P.Widmer Ed., Kluwer Law International, at p 27

The statutory presumption of fault may be found in the Hamburg Rules where it is related to the carriage of goods by sea, the Convention Relating to the Carriage of Passengers and Other Luggage by Sea.³⁰

2.2.2 Strict Liability

The origin of strict liability lies in the traditional remedy of the tort of nuisance in English law although it is currently deemed as a particular remedy.³¹ As mentioned earlier, the deficiencies in the classical remedies of English tort law, as far as the oil pollution damage is concerned, prompted legislators to bring new legal regimes for environmental victims. In fact, they started to replace fault based liability by strict liability since it includes some advantages for oil pollution claims. The main characteristics of the strict liability regime are as follows:

First, strict liability based system is more adaptable to the principle of “Polluter Pays”³² in comparison with the classical methods of tort law. In addition, it seems to be more successful in preventing the potential polluters to be appeared. Furthermore, it has resolved the problem of proving negligence by the victim. The shipowner is expected to accept the compensation for pollution damage as an expense of his business. At the same time, he could protect himself by entering into a liability insurance contract. Finally, the compulsory insurance together with strict liability accelerates the recovery of damages.³³

³⁰*Supra* note 20, at p 17

³¹W.V.H Rogers, *Winfield and Jolowicz on Tort*, 4th Edition, at p443

³²As has been quoted by Gauci, the “Polluter Pays” principle is defined by Wetterstein,P., *Winfield and Jolowicz on Tort*, 4th edition, p. 443 as follows:

“The principle to be used for allocating costs of pollution prevention and control measures to encourage rational use of scarce environmental resources and to avoid distortions in international trade and investment is the so-called “Polluter-Pays-Principle”. The principle means that the polluter should bear the expenses of carrying out the above-mentioned measures decided by public authorities to ensure that the environment is in an acceptable state. In other words, the cost of these measures should be reflected in the cost of goods and services which cause pollution in production and/or consumption. Such measures should not be accompanied by subsidies that would create significant distortions in international trade and investment.”

³³ *Supra* note 20, at p 20

Consequently, in drafting a considerable number of conventions related to environmental damage such as the CLC 1969 and the Fund Convention 1971, the method of strict liability has been taken by legislators as the basis for the conventions.

2.3 The *Torrey Canyon* and the Evolution of International Conventions

The *Torrey Canyon*, a Liberian registered ship whose tank capacity was 12,300 tons, was one of the largest vessels in 1967 in the world. She left Kuwait carrying 120,000 tons of crude oil cargo bound for Milford Haven in Wales. When she was close to the UK, the master decided to change the course without consulting anybody. The reason for his decision was the probability of five days of delay in case of taking the course as set before. Therefore, he took the shortcut to get into Milford Haven at the right time.

On 18 March 1967, the *Torrey Canyon* struck the Pollard Rock on Seven Stones Reef, between the Cornish mainland and the Scilly Isles due to the heavy weather in her entrance to the English Channel. She ran aground, and this caused a huge oil spill from the tank of the vessel to the water. It was assumed from the first hours that the disaster was the biggest pollution that ever happened in the area.³⁴

Royal Navy vessels together with a number of commercial ships started to spray detergents on the spilt oil. Different groups showed up at the scene in order to handle the pollution damage, and salvors went on board the ship to refloat it. They were successful but after some days she broke into pieces and the salvage team encountered the biggest shipwreck worldwide.

After the salvage operation was abandoned, the British government decided to burn the remaining oil on board the vessel by bombardment. However, a large amount of oil had already spread at sea and they failed to stop it from

³⁴http://news.bbc.co.uk/onthisday/hi/dates/stories/march/18/newsid_4242000/4242709.stm
available on 08/02/2011

causing damage to the nearby beaches. As a result, the coastal state faced high cost for clean-up operation.

It was concluded in the inquiry of the Liberian government that there was no technical problem on board the vessel and the only cause of the disaster were the master's error. Therefore, the Italian master was considered responsible for the casualty since he failed to exercise the practice of good seamanship for his decision to alter course in a rough weather without giving signals.

Quickly after the *Torrey Canyon* disaster, the attention was drawn to the deficiencies of regulation and legal problems related to the concerning issues. As far as the public law is concerned, there was the question as to whether the British government was legally allowed to bombard the vessel. Although it was clear that the vessel ran aground very close to the British territorial waters, it was still located in the high seas and outside its territorial waters. On the other hand, it caused serious damage to the British coast as well as the death of thousands of seabirds and endangering the livelihood of many people living in the area.

The private law problems revolved on the matters concerning the compensation for oil pollution damage. The main problem in this respect was to determine the applicable jurisdiction. The ambiguity to the application of governing law derived from the fact that different states were involved in the case. The vessel was owned by a Bermudian company but most of its officers were in the US. Additionally, she was registered in Liberia. Moreover, she was chartered to the US and sub-chartered to the UK. Finally, the pollution damage occurred in the coast of the UK and France. This uncertainty in the governing law caused a number of problems such as ambiguity in the limitation of liability rules since each of the states mentioned above had their own rules regarding the issue. Therefore, the owners and liability insurers were not secured of not being required to pay more compensation than the sum they had limited in another jurisdiction. On the other hand, the right of recovery for the victim in some kinds of

losses such as cost of cleanup operation was not justified in many jurisdictions. Furthermore, the lack of compulsory insurance made it difficult for the enforcement of the recovery rights were unlikely to be exercised.³⁵

These were the most significant reasons among the others which urged the international legislators and the shipping industry to react to the *Torrey Canyon* disaster. For example, the British government sent a note to IMCO to propose amendment to the international regulations related to oil pollution. Quickly after, the Legal Committee of IMCO assigned Working Group I to deal with public law issues and Working Group II to examine private law matters relating to oil pollution damage. Beside the efforts of IMCO, CMI created the International Torrey-Canyon Sub-Committee which dealt with private law aspects of liability and compensation. In 1969, CMI sent its draft Convention to the Legal Committee of IMCO. The Committee agreed on most of the provisions but some important issues concerning the basis of liability, basis of jurisdiction, proof of financial responsibility, and as such remained un-agreed. Therefore, IMCO adopted its own draft with alternative provisions where the issue was not decided.³⁶

In addition, the efforts of oil and shipping industries led to an agreement known as TOVALOP. Furthermore, the Brussels Conference on Marine Pollution Damage resulted in the adoption of CLC 1969 which was a revolutionary convention regarding the oil pollution damage. Another agreement made by oil industry was a known as CRISTAL which was agreed in January 1971. Finally, the 1971 conference of IMCO adopted the Fund Convention 1971 which was an International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage.

³⁵*Supra* note 7, at p 12

³⁶*Ibid*, at p 12

3 Conventional Law Regarding the Oil Pollution Liability

3.1 Main Features of the CLC

3.1.1 Scope of application

In order to realize whether the CLC applies to a pollution claim, it is necessary to analyze the provisions related to the scope of application of the Conventions among which Article II of the 1992 CLC has great importance in this respect.

However, before analysis of the mentioned article, it is convenient to first clarify some words used by the Convention to determine the scope of its application. For this purpose, Article I in both CLC 69 and CLC 92 have provided definitions for these terms: “Ship”, “Person”, “Owner”, “State of the ships registry”, “Oil”, “Pollution damage”, “Preventive measures” and “Incident”.

3.1.1.1 Important Definitions to Scope of Application

Firstly, the definition of “ship” has great importance. The rule that the shipowner is liable for any pollution damage by the ship³⁷ applies only if the polluting ship falls into the definition of “ship” described in Article I.

The definition of “ship” under the CLC includes only oil tankers since CLC 69 was firstly intended to be compatible with Fund Convention 1971 which was funded by oil industry. However, the definition of oil tankers, as far as the scope of application is concerned, has been extended in the new Convention. Whereas CLC 69 applies only to spills from oil tankers carrying actually oil as cargo,³⁸ CLC 92 applies to spill from any oil tanker notwithstanding that it carries oil as cargo at the time of incident.³⁹

³⁷ Article III (1) CLC 92

³⁸ Article I.1

³⁹ Article I.1

In this respect, a question may arise whether the combination carriers or oil/bulk/ore ships (OBOs)⁴⁰ fall within the scope of application of the CLCs. Definitely, when they carry oil as cargo in both versions of CLC apply if a spill occurs from the vessel but they are excluded from CLC 69 while they are not carrying oil. Subject to the definition of ship provided by CLC 92, there might be some occasions that the vessel is not actually involved with oil trade but she is deemed to do so since residues of oil cargo from the previous voyage have remained on board the vessel. Therefore, CLC 92 applies in case of an oil spill from the tanker.⁴¹

Another question may arise whether the mobile offshore units⁴² are considered as ships in the CLC. Under CLC 69, these kinds of units are not defined as ships if they are not carrying oil as cargo. But the question is whether they are recognized as ships if they are actually caring oil in their storage. The ambiguity arises from the lack of definition of the cargo in the Convention. While some argue that the oil carried on board the ship should be defined as cargo without taking into account the trade purpose, others argue that it should be loaded for the purpose of carrying from one place to another place to be considered as cargo. In the French version of the Convention it is stated that the oil should be loaded for the purpose of being transported. By reference to the French text for the interpretation of the provision, the CLC 69 does not apply if the vessel is laden by oil for storage purposes.⁴³

As mentioned earlier, the vessel should only be constructed for the purpose of carriage of oil in order to fall within the scope of CLC 92 Convention. Therefore, the problems of CLC 69 do not arise under CLC 92. However, the variety of FSUs and FPSOs has made it difficult to decide which types are constructed particularly for the purpose of oil carriage especially the

⁴⁰A large multi-purpose ship designed to carry cargoes wither of ore or other bulk commodities or oil so as to reduce the time the ship would be in ballast if restricted to one type of commodity. This type of ship is sometimes called bulk-oil carrier. See the definition at <http://dictionary.babylon.com/ore-bulk-oil%20carrier/>, available on 05/03/2011

⁴¹Article I.1

⁴²Including floating storage units and floating production, storage and offloading units used for exploitation in a more economic way

⁴³*Supra* note, at p 81

multiple purpose ones with capability for oil transportation. In 1998, the problem was addressed at the 1992 Fund Assembly to be discussed. In response to the issue, the Assembly took the position that some units are likely to fall within the scope of CLC 92 but generally, it does not happen. This decision was supported by the view of the delegates who argued that even if a unit is considered as a ship, the convention applies only if the spilt oil is a cargo or it escapes from the bunker not the storage due to the definition of “oil” under Article I.5.⁴⁴

It is important to have a good understanding of the definition of the term “pollution damage” since liability of the owner is dependent on an understanding of what is considered as pollution damage under CLC⁴⁵ The ambiguity of the definition of this term under CLC 69 resulted in controversial discussions in many cases as to whether the owner is liable or in other words what kind of claims are admissible against the owner.⁴⁶

In this respect, claims for personal injury and death are generally immaterial but if personal injury or death occurs during the operation of preventive measures, it is possible to fall within the definition of “pollution damage” under CLC 69.⁴⁷ Claims for damage to property and preventive measures are included in the framework of admissible claims. This may include loss of profit for the owners of contaminated boats and fishing gears or damaged road, piers and embankments caused by preventive measures. What has not been compromised is the delimitation of such losses which shall be compensated by the shipowner.⁴⁸ Moreover, there is not enough guidance for claims for pure economic loss whether they are admissible when there is

⁴⁴It provides that: ““oil” means any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship”. See also *supra* note 7, at p 82-83

⁴⁵Article III.1

⁴⁶Article I.6 of CLC 69 provides that: “Pollution damage” means loss or damage caused outside the ship carrying oil by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, and includes the costs of preventive measures and further loss or damage caused by preventive measures.”

⁴⁷*Ibid*

⁴⁸Måns Jacobsson, *The International Oil Pollution Compensation Funds and the International Regime of Compensation for Oil Pollution Damage*, in: Jürgen Basedow, Ulrich Magnus, (eds.), *Pollution of the Sea – Prevention and Compensation*, Berlin, Heidelberg: Springer-Verlag, 2007, at p471

no damage to property. For example, impairment of environment such as coastlines, hoteliers and restaurants which obtain their income from tourists and the fishermen who are prevented from fishing due to pollution damage. Nevertheless, the IOPC Fund has compensated the victims who were dependent to sea-related activities for their income in many cases and it has actually a great experience in admissibility of claims related to pure economic loss.⁴⁹

There was also another dispute as to which preventive measures are to be considered reasonable in order to be covered by the Convention. Moreover, to what extent is the cost recoverable when these measures overlap with salvage operations?⁵⁰

The difficulties of determining which types of claims are recoverable by this provision led to the revision of the definition of pollution damage in CLC 92 as follows:

Pollution damage means:

(a) Loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of environment shall be limited to costs or reasonable measures of reinstatement actually undertaken or to be undertaken;

(b) The costs of preventive measures and further loss or damage caused by preventive measures.⁵¹

As can be seen, a proviso has been added to the revision by which it has been clarified to what extent the owner is liable for the claims related to environmental damage. It excludes claims to marine environment as such

⁴⁹Edward H.P. Brans, *Liability for damage to public natural resources*, Kluwer Law International, 2001, at p 322

⁵⁰*Supra* note 7, at p 95

⁵¹CLC 92 Article I.6

but states that costs incurred in restoring the marine environment are admissible.

The proviso also stipulates that the loss of profit from impairment of environment is also embraced by the definition of pollution damage although it is still indefinite how far the right of the claimants in such cases could extend. In spite of clarification of the new definition to problems related to the claims for impairment of the environment, the difficulties to other claims still remained untouched.⁵²

“Preventive Measures” is another important definition provided by the CLC as follows: “Any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage.”⁵³ Both versions of CLC have made it clear that they apply only if the claimant takes the measures after the occurrence of the incident. Otherwise, he is not entitled to get any recovery for his costs. However, in circumstances that the measures are taken after the incident but before any oil spill, there is still ambiguity whether the CLC applies. The answer of this question relies on the definition of the term “incident” which is different in the two versions of CLC. Under CLC 69, incident is defined as “any occurrence or series of occurrences having the same origin, which causes the pollution damage.”⁵⁴ As can be seen, the provision does not include the occurrences which are a threat to cause damage. Therefore, CLC 69 does not apply to the measures taken before the escape of oil from the vessel. On the contrary, CLC 92 has made it clear that the occurrences which are a threat to cause pollution damage are included in the definition of the term “incident”.⁵⁵ Hence, the measures taken by the claimant to prevent threatening occurrence are recoverable under CLC 92.⁵⁶

⁵²*Supra* note 48, at p 489

⁵³Article I.7, CLC 69 & 92

⁵⁴Article I.8

⁵⁵Article I.8

⁵⁶*Supra* note 7, at p 85

3.1.2 Geographical Scope

The geographical application of the Convention is provided by CLC 92⁵⁷ as follows:

This Convention shall apply exclusively:

(a) To pollution damage caused:

(i) in the territory, including the territorial sea, of a Contracting State; and

(ii) in the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured.

(b) To preventive measures, wherever taken, to prevent or minimize such damage.

The criteria of the application of the Convention have been based on the territory, irrespective of the nationality or residence of the claimant.⁵⁸ According to this provision, the pollution which occurs outside the territorial waters of a contracting state or in a non-contracting state is not included in the scope of the Convention. In addition, as far as the pollution is within the territorial water, the Convention applies without taking into consideration whether the preventive measures are taken within or beyond the territorial waters.

The above Article differs from its parallel provision in CLC 69 in designating the scope of application. Application of the CLC 69 is restricted to the pollution damage within the territory including territorial sea as the

⁵⁷ Article II

⁵⁸ Z.Oya Özcayır, *Liability for oil pollution and collisions*, LLP, 1998, at p 212

concept of exclusive economic zone is established under 1982 UNCLOS.⁵⁹ However, the EEZ under CLC 92 is extended to an area beyond and adjacent to the territorial sea of a contracting state determined by that state if it has not established EEZ under UNCLOS.⁶⁰

Since there were some contracting states with establishing neither EEZ nor such areas, the Assembly of 1992 Fund adopted a resolution⁶¹ in order to clarify the scope of application of the CLC and Fund Convention. According to this resolution, the states were called upon to give notice of their established EEZ or designate such areas to the IMO or the 1992 Fund.⁶²

3.1.3 Liability

Article III.1 of the CLC the liability of the shipowner remained untouched after its reforms. Accordingly, it holds the owner of a ship liable for any pollution damage which escapes from his vessel as a result of an incident unless he proves a number of facts provided by paragraph 2 and 3 of the same Article.⁶³ Thus, being the owner of the vessel at the time of incident is enough to be liable for the oil pollution without taking account of his nationality, residence or the state in which the vessel is registered.⁶⁴ In addition, the Convention took the strict liability approach instead of the traditional liability based on fault or negligence. As a result, the claimant does not have to prove that the shipowner is at fault or negligent. Even if it is proved that the incident is not a result of the shipowner's fault or negligence, the claimant is entitled to compensation.⁶⁵

⁵⁹M.Tsimplis, *Marine pollution from shipping activities*, 2008, 14 JIML, at p 107

⁶⁰Article II (ii)

⁶¹Resolution No.4 of the 1992 Fund Assembly, annex IV to the record of decisions of its 1st session, 92FUND/A.1/34

⁶²*Supra* note 7, at p 77

⁶³“Except as provided in paragraphs 2 and 3 of this Article, the owner of a ship at the time of an incident, or, where the incident consists of a series of occurrences, at the time of the first such occurrence, shall be liable for any pollution damage caused by the ship as a result of the incident.”

⁶⁴*Supra* note 58, at p 214

⁶⁵For more details about the concept of fault basis liability and strict liability see previous section.

3.1.3.1 Exceptions to Strict Liability of the Shipowner

The strict liability of the shipowner provided by the Convention is limited by a number of exceptions as follows:

2. No liability for pollution damage shall attach to the owner if he proves that the damage:

(a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character, or

(b) was wholly caused by an act or omission done with intent to cause damage by a third party, or

(c) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

3. If the owner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from his liability to such person.⁶⁶

The reason why it was decided to consider the exceptions was the imposition of the Convention for compulsory insurance on shipowners. In fact, these exceptions are liabilities related to the pollution damage resulting from the risks that the marine insurers were reluctant to bear, and these kinds of risks were excluded from the standard forms of marine insurance cover. Therefore, it seemed logical to acquit the owner from them.⁶⁷

As can be seen, the pollution damage need not be wholly caused by the risk for the purpose of exclusion of liability resulted from “war risks” and “natural phenomenon”. On the contrary, in cases of pollution caused by

⁶⁶Article III.1, paragraph 2 & 3

⁶⁷*Supra* note 7, at p 87 & 88

other risks,⁶⁸ partial cause to the damage does not discharge the owner from liability.

In case of negligence of authority for the maintenance of navigational aids, an important question may arise as to whether the owner is exonerated from the liability unconditionally or only if an alternative remedy for pollution damage against the responsible authority is available. On the one hand, the approach of strict liability of the Convention is more compatible with the latter. On the other hand, the fact that CLC does not provide liability for the responsible authority brings difficulty to achieving uniform application of the Convention due to the various liability rules in different jurisdictions. Therefore, it is more logical to accept that the intention of the provision was to exempt the liability without any condition. Otherwise, it would have been mentioned in the context that the availability of the alternative remedy for oil pollution is necessary.⁶⁹

3.1.3.2 Channeling the Liability

Claims for compensation for oil pollution damage shall be made within the scope of the Convention only against the registered owner of the ship. However, this does not harm the right of victims to bring action against the registered owner of concerned ship outside the Convention.⁷⁰ However, according to the Civil Liability Conventions there are some parties against which no claim shall be made either within or outside the Convention. In case of CLC 69, this is reference to servants or agents of registered owner of the ship; and where CLC 92 is in force, this rule expands to the charterer, manager or operator, salvors, the person who takes preventive measures and their servants or agent, and the pilot.⁷¹ However, this does not preclude the owner from availing of his right of recourse against such parties.⁷²

⁶⁸such as malicious risks and negligence of authority for the maintenance of navigational aids

⁶⁹*Supra* note 7, at p 91

⁷⁰Article III. 4

⁷¹CLC 92 Article III.4 “No claim for compensation for pollution damage may be made against the owner otherwise than in accordance with this Convention. Subject to paragraph 5 of this Article, no claim for compensation for pollution damage under this Convention or otherwise may be made against:

This is called channeling the liability which was the response of the legislators to the concerns related to the shipowner's right to limit his liability to be harmed. If a shipowner limits his liability under CLC but the claimants are allowed to bring claims outside of the scope of CLC irrespective of the CLC limitation rules, his right would be hurt. Moreover, the exclusion of liability of the other parties was due to the need of limited liability which can be covered by the insurance market.⁷³

However, it is important to bear in mind that the channeling provision does not affect liability of the shipowner for claims other than those for pollution damage. Hence, the claims related to the claims for the loss of cargo are not immune from the remedies outside the CLC.

3.1.3.3 Limitation of Liability

The shipowner is entitled to limit his liability to 3 million units of account (SDR) for ships up to the size of 5.000 tons. If the tonnage of a ship exceeds 5.000 units, then the liability of the owner increases to 420 SDR for each additional ton. However, the Convention provides a maximum of 59.7 SDR for the aggregate amount.⁷⁴ This maximum amount is larger than the one provided by CLC 69 which shows that the new Convention provides greater liability for the owners.⁷⁵

-
- (a) the servants or agents of the owner or the members of the crew;
 - (b) the pilot or any other person who, without being a member of the crew, performs services for the ship;
 - (c) any charterer (howsoever described, including a bareboat charterer), manager or operator of the ship;
 - (d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
 - (e) any person taking preventive measures;
 - (f) all servants or agents of persons mentioned in subparagraphs (c), (d) and (e); unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result"

⁷²Article III.5

⁷³*Supra* note 7, at p 97

⁷⁴CLC 92 Article V.1

⁷⁵The unit used for aggregate amount under CLC 69 is franc and the maximum amount is 210 francs.

For the purpose of calculation of the aggregate amount, the ship's tonnage gross tonnage which is calculated under the criteria of Annex I of the International Convention on Tonnage Measurement of Ships 1969.⁷⁶

In respect of the right of limitation, CLC 92 provides that:

The owner shall not be entitled to limit his liability under this Convention if it is proved that the pollution damage resulted from his personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.⁷⁷

Compared with the method taken by CLC 69, only in exceptional cases the right of the owner to limit his liability might be lost.⁷⁸

However, such right is not secure when the ownership is a corporation. For example, the right of limitation will be lost when a vessel is owned by a company and someone who is considered to be the *alter ego* of the company commits an act or omission as described under Article V.2 of the Convention. The same rule applies when a group of people constituting the management is responsible for running a ship. The act or omission of each member of the managing group could result losing the right of limitation for the owners.⁷⁹

It is important to highlight that CLC requires the owner to constitute a fund for the total sum representing his limit of liability in order to avail of his right of limitation. For this purpose, two options are available to the owner:

1. Depositing the sum in a court 2. Producing a bank guarantee or other

⁷⁶CLC 92 Article V(10) The parallel Article in CLC 69 provides a different approach for calculation of ship tonnage: "For the purpose of this Article the ship's tonnage shall be the net tonnage of the ship with the addition of the amount deducted from the gross tonnage on account of engine room space for the purpose of ascertaining the net tonnage. In the case of a ship which cannot be measured in accordance with the normal rules of tonnage measurement, the ship's tonnage shall be deemed to be 40 per cent of the weight in tons (of 2240 lbs) of oil which the ship is capable of carrying."

⁷⁷Article V.2

⁷⁸CLC 69 embraces more cases in which this right could be lost by stipulating that: "If the incident occurred as a result of the actual fault or privity of the owner, he shall not be entitled to avail himself of the limitation provided in paragraph 1 of this Article."

⁷⁹*Supra* note 7, at p 103-105

guarantee provided that it should be acceptable by jurisdiction of the contracting state in which the fund is established.⁸⁰

Practically, there is no need to establish a fund under the CLC if the claimants are guaranteed to receive compensation under the Fund Conventions. Moreover; since the judicial process of distributing the limitation fund in accordance with CLC 69 is time consuming and expensive, it seems to be more convenient to settle the claims amicably. Nevertheless, the IOPC Fund also may require the owner to show a formal limitation decree even if there is no dispute about the owner's right of limitation. The 1971 Fund Convention suggests that it is not necessary for the owner to bear the excessive burden of establishing the fund. Therefore, it does not require the owner to constitute a fund on the ground that the legal expense imposed on the owner is huge even if the limitation fund is not large. In order to solve the problem, the 1992 CLC accredits the Fund Assembly to decide whether the owner should pay the compensation under CLC even if he has not established a limitation fund in accordance with CLC.⁸¹

Another provision related to the limitation fund which is of importance is the regulations of the distribution of the fund when the claims under CLC exceed the fund. As a general rule, the fund should be distributed among the claimants in proportion to amounts of their established claims.⁸² The same rule applies to the persons who have the right to be compensated by subrogation. This might happen, for example, when an owner or his agent or servant or insurer pays the compensation for pollution damage before distribution of the fund. In such case, the owner or the mentioned parties are entitled to bring subrogation claims to the extent of the compensation they have already paid.⁸³ In addition, if the applicable national jurisdiction

⁸⁰CLC 92 Article V.3

⁸¹*Supra* note 7, at p 109

⁸²CLC, Article V.4

⁸³CLC V.5

permits, it might be possible for other parties to exercise the subrogation claim in order to reimburse their payment for the pollution damage.⁸⁴

In respect of the owner's expenses, the Convention provides that:

Claims in respect of expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize pollution damage shall rank equally with other claims against the fund.⁸⁵

Therefore, the fund will be distributed with no prejudice among all claims including ones made by the owner for his voluntarily expenses to prevent damage. As a result, the owner may not be indemnified for all the expenses he has paid if the claims exceed the fund. However, there is a way for an owner who has not been successful to full compensation by subrogation claim to obtain the rest of his payment from the IOPC Fund if the case is governed by the Fund Convention.⁸⁶

3.1.4 Compulsory Insurance

One of the most innovative provisions introduced by the CLC is the compulsory insurance which was the result of an urgent need of a new system in order to please the pollution victims. For the purpose of achieving a new system which is satisfactory for oil pollution liability and compensation, the insurance arrangement was needed to cover more liabilities in amount and types rather than before. Accordingly, the CLC conventions impose the compulsory insurance with more effective compensation for the victims on the shipowner as a person who is liable for the oil pollution damage.⁸⁷

The requirement for the owner of the ship to maintain insurance or other financial security to cover his liability for pollution damage applies to the ships that are registered in a Contracting State and carrying more than 2,000

⁸⁴CLC, Article V.5

⁸⁵CLC, Article V.8

⁸⁶*Supra* note 7, at p 111

⁸⁷Ling Zhu, *Compulsory insurance and compensation for bunker oil pollution damage*, Berlin, Heidelberg: Springer-Verlag, 2007, at p 52

tons of oil as cargo. CLC also allows the owner to provide other forms of security such as the guarantee of a bank or a certificate delivered by an international compensation fund.⁸⁸ However, owners enter into insurance contracts with P&I clubs specialized in marine insurance risks, and, they are generally reluctant to provide security other than insurance.⁸⁹

As a general rule, compulsory insurance only applies to the ships defined by CLC which are registered in a Contracting State.⁹⁰ Nevertheless, the Convention requires all the ships which enter or leave a port of a Contracting State even if the vessel is not registered in a Contracting State, provided that she is carrying more than 2,000 tons of oil as cargo. Accordingly, the Contracting State must ensure that the owners of such ships are secured by appropriate insurance or other security required by CLC.⁹¹

Under the provisions of the compulsory insurance, it is stated that the required security shall be provided by a certificate affirming that the adequate insurance or other security is in force. Such certificate shall be issued by the appropriate authority of the Contracting State where the ship is registered unless the ship is registered in a Non-Contracting State. In such situation, the certificate may be issued by the eligible authority of any Contracting State.⁹² The original certificate shall be carried on board and its copy is to be kept by the issuing authority.⁹³ In addition, the concerning P&I club attaches a “Blue Card” to the certificate which shows the adequate insurance is provided and confirm the consent of the P&I club to act as the owner’s guarantor.⁹⁴

According to the certification rules, the concerning insurance or other securities do not meet the requirements of the Convention if it can cease for any reason other than its expiry date. However, it is eligible for the owner to

⁸⁸CLC Article VII.1

⁸⁹*Supra* note 7, at p 113

⁹⁰Article VII.1

⁹¹Article VII.11

⁹²Article VII.2

⁹³Article VII.4

⁹⁴ *Supra* note 7, at p 113

terminate the insurance or security, without dissatisfying the requirements of the insurance provisions of the Convention, by sending a notice to the authority three month before the desired date of termination or by giving the certificate to the relevant authority.⁹⁵

In addition, the conditions of issue and validity of the certificate shall be determined by the issuing State.⁹⁶ Such certificates which are issued by a Contracting State shall be accepted by other Contracting States and considered to have the same value of similar certificates issued by their own authorities. If a Contracting State believes that the insurer or guarantor has failed to provide the financial support required under the Convention, it can consult the issuing or certifying State.⁹⁷

Moreover, it is provided by CLC 92 that a vessel which is not registered in a Contracting-State can receive the certificate issued by a Contracting-State. This imposes the recognition of such issued certificate by all the Contracting States.⁹⁸

An interesting provision of the CLCs in respect of compulsory insurance is the right of claimants to bring action directly against the insurer or other persons who guarantee the security for the owner's liability. In order to respond to such claims, the insurer is entitled to limit his liability for oil pollution damage, in accordance with the criteria of limitation of liability of the Convention, even if the owner himself has lost his right of limitation due to the reasons described earlier.⁹⁹

The insurer may defend the direct action against him on the basis of any defence the owner himself could have invoked if he was the defendant. Nevertheless, the bankruptcy or winding up the owner is exempted from this rule. Furthermore, the insurer is not liable for the pollution damage which resulted from the owner's willful misconduct. On the other hand, the insurer

⁹⁵Article VII.5

⁹⁶Article VII.6

⁹⁷Article VII.7

⁹⁸*Ibid*

⁹⁹Article VII.8

is not entitled to invoke any defense which he might have been eligible to do so if the action was brought by the owner.¹⁰⁰

3.1.5 Jurisdiction and Enforcement of Judgments

An important feature of the CLC is the provisions relating to determination of the competent jurisdiction and enforcement of judgments. CLC provides that if an incident results pollution damage in territorial sea or an area referred to different states some which are contracting states, the actions shall be brought to the contracting states since the Courts of such states are exclusively competent to other jurisdictions.¹⁰¹ However, there is no restriction under CLC for claimants to bring action against the shipowner in the courts of states where the vessel is registered or he has his business if all the affected states are CLC states. Instead he is entitled to sue the shipowner in courts of his own country.¹⁰²

A question may arise in respect of pollution damage which occurs in more than one CLC State. According to the Convention, the courts of the State where the owner has establish his limitation fund has exclusive competence to determine apportionment and distribution matters of the fund.¹⁰³ However, this does not influence the competence of other Courts in CLC States to determine the merits of claims for compensation, and the Court which has established the fund has to recognize the judgments of these Courts in such circumstances.¹⁰⁴ Another uncertainty which may also derive from this provision is whether the Court administrating the fund is competent to decide the entitlement of the shipowner to limit his liability. Although it is logically interpreted that the judgment of whether he is

¹⁰⁰*Ibid*

¹⁰¹Article IX.1

¹⁰²P.W. Birnie, A.E Boyle, C. Redgwell, *International law & the environment*, Oxford University Press, 2009 at p 434, See also *Supra* note 7, at p 116

¹⁰³Article IX.3

¹⁰⁴*Supra* note 7, at p 117

allowed to his right of limitation, it may practical cause difficulties if more than one court is competent to decide the issue.¹⁰⁵

The enforcement of judgments for pollution damage under the CLC is rarely essential by the claimants since the CLC has established a financially immune system by imposing compulsory insurance and the possibility of direct action against the owner. There are only two circumstances under which the victim might not be secure if he does not enforce the judgment: 1. The vessel does not fulfill the requirements of compulsory insurance due to her small size.¹⁰⁶ Consequently, the victim is not able to bring direct action against the owner even if the vessel is adequately insured. 2. The owner has lost his right of limitation and faces a great amount of comparing to the CLC limited liability. However, these circumstances might happen in a few cases where CLC 92 applies and where the IOPC fund pays for compensation. In such few cases in addition to circumstances where the IOPC Fund takes steps to enforce the judgment by arresting the vessel or other assets of the owner, there is a need of recognition of the judgment in jurisdiction of Contracting States other than administrative jurisdiction.¹⁰⁷ For this purpose, the CLC provides that any judgment from the courts of a Contracting State shall be recognized by the other Contracting States if it is enforceable in the State of origin and is no longer subject to the ordinary forms of review. There are nevertheless two exceptions to the recognition of other jurisdictions: 1. If the judgment is gained by fraud. 2. If the claimant does not give reasonable notice to the defendant.¹⁰⁸ In addition, the recognition of the judgment shall be enforceable once the formalities of the considered State have been completed.¹⁰⁹

Another issue of the CLC to be considered is that they include provisions which limit the right of the claimant to arrest the vessel since the

¹⁰⁵ *Ibid*

¹⁰⁶ Article VII.1 , See previous discussion on Compulsory Insurance

¹⁰⁷ *Supra* note 7, at p 119

¹⁰⁸ Article X.1

¹⁰⁹ Article X.2

establishment of fund would be enough financial security.¹¹⁰ Accordingly, the Court of any Contracting State must release any ship or other property of the shipowner or order the release of any bail for preventing such arrest if the claimant has access to the Court administering the Fund.¹¹¹ The shipowner nevertheless is bound to fulfill two requirements in order to take advantage of restrictions on arrest. Firstly, he should establish a limitation fund in accordance with CLC provisions. Secondly, he should be entitled to limit his liability.¹¹² The only way to determine whether the owner is entitled to the right of limitation is to obtain a court decree which entails a time consuming process and would weaken the purpose of restriction provisions of CLC. Accordingly, the English Admiralty Court in *The Wladyslaw Lokietek*¹¹³ which was governed by the 1957 Limitation Convention¹¹⁴ held that the shipowner is required to prove that the incident is not caused by his fault.¹¹⁵ Therefore, there is an argument that it might cause serious difficulties for the shipowner to take advantage of provisions for restrictions on arrest. However, there is another discussion which supports the view that it is not necessary to follow the approach of cases under 1957 Limitation Convention and UK legislation due to the secure system of CLC and Fund Convention. The CLC 92 has advanced this reason even more strongly by providing a more restrictive test for barring limitation. Furthermore, it put the burden of proof on the shoulders of the claimant to show that the incident is caused by the defendant.¹¹⁶

3.2 Fund Convention

As it has been discussed in the previous chapter, the CLC is the first part of the two-tier compensation system in most CLC states. The Fund Convention

¹¹⁰Article VI.1 (a)

¹¹¹Article VI.1 (b) , Article VI.2n

¹¹²Article VI.1

¹¹³[1978] 2 Lloyd's Rep.

¹¹⁴Both CLC 69 and CLC 92 reflect the provisions of the 1957 Limitation Convention which provides that the shipowner is entitled to limit his liability only after he obtains an irrevocable decree of court

¹¹⁵*Supra* note 7, at p 120-123

¹¹⁶*Ibid*

constitutes the second part of this system by providing a larger amount of compensation for oil pollution damage in excess of shipowner's liability under the CLC.¹¹⁷ The main reason for creating the Fund Convention was to balance the contributions for oil pollution damage between the shipowners and the oil industry. For this purpose, it was agreed at the 1971 IMCO Conference that the oil interests shall provide compensation for oil pollution which is beyond the liability of the owner under CLC. Hence, victims can bring their claims to the liable owner first and only if he is not able to get full compensation from the owner, he is entitled to bring action against the Fund.¹¹⁸

There are two Fund Conventions in force which work in conjunction with both versions of CLC. In a state which is a party to CLC 69, the 1971 Fund Convention applies. In this respect, the International Oil Pollution Compensation Fund (IOPC Fund) which is an inter-governmental organization was established by CLC 69 in order to provide more satisfactory compensation regime for oil pollution damage. Afterwards, CLC 1969 and 1971 Fund Convention were amended by 1992 protocols.¹¹⁹ Subsequently, the 1971 Fund Convention was not in force any more from 24 May 2002 and the IOPC Fund 1992 replaced its predecessor.¹²⁰ In 2003, following the catastrophic oil spills which caused a huge amount of pollution damage in Spanish and French coasts, it was accepted that the two-tier system could not provide adequate compensation. Therefore, after a strong pressure from the EU represented by the White Paper on Environmental Liability, IMO agreed a protocol to the 1992 IOPC Fund. The purpose of this supplementary fund was to create a voluntary third tier for oil pollution liability. Finally, it came into force in 2005 and is available only to its contracting states for providing high levels of compensation for

¹¹⁷ *Supra* note 7, at p 127 The maximum limit for oil pollution damage of IOPC Fund is 450 million francs per incident

¹¹⁸ Alan Khee-Jin Tan, *Vessel Source Marine Pollution: The Law and Politics of International Regulation*, CSICL, 2006, at p 302

¹¹⁹ *Supra* note 102, at p 434

¹²⁰ M. Tsimlis, *Marine Pollution from Shipping Activities*, in chapter 8 of *Southampton on Shipping Law* written by Institute of Maritime Law, Infroma, 2008, at p 254

oil pollution damage.¹²¹ However, the Contracting parties to 1992 are not obliged to join the supplementary fund if they believe that the IOPCF 1992 is sufficient for providing compensation. On the contrary, the States may decide to join it by involving their oil importer in greater amounts of contribution in return for receiving more compensation in the case of an incident.¹²²

This chapter will be devoted to discussing the main features of the Fund Convention starting with an explanation of the constitution of the IOPC Fund and how it works.

3.2.1 IOPC Fund

The International Oil Pollution Compensation Funds (IOPC Funds) are three intergovernmental organizations (the 1971 Fund, the 1992 Fund and the Supplementary Fund) which provide compensation for oil pollution damage resulting from spills of persistent oil from tankers.¹²³

The Funds are independent legal entities although they were established under the CLC and the Fund Conventions which were adopted by IMO. In addition, the Funds are not UN agencies neither a part of the UN system. However, they are inter-governmental organizations which follow similar procedures as in the UN. Moreover, only states can be member of the Funds, and to do so they must accede to the 1992 Civil Liability Convention and to the 1992 Fund Convention by depositing a formal instrument of accession with the Secretary-General of IMO.¹²⁴

The commitment of the oil industry to contribute compensation for oil pollution damage became concrete by the birth of 1971 and 1992 Fund Conventions, and the creation of the IOPC Fund was established to

¹²¹It covered compensation for pollution damage up to the amount of 750 million SDRs.

¹²²*Supra* note 120, at p 267

¹²³<http://www.iopcfund.org/> Available on 18/3/2011

¹²⁴[http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-on-the-Establishment-of-an-International-Fund-for-Compensation-for-Oil-Pollution-Damage-\(FUND\).aspx](http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-on-the-Establishment-of-an-International-Fund-for-Compensation-for-Oil-Pollution-Damage-(FUND).aspx) Available on 18/3/2011

effectuate their contribution.¹²⁵ The Fund is a global intergovernmental body which provides compensation for victims of oil pollution and was constituted in October 1978. It operates in accordance with the CLC and Fund Convention and one of its main objectives is to settle the claims out of courts in order to avoid time consuming procedure. However, the claimants may bring their claims to the competent court.¹²⁶

The Fund organization consists of the Assembly, the Executive Committee, the secretariat and the Director. Fund Conventions and the International Regulations of the Assembly have the administrative role of the Fund.¹²⁷

The Assembly is the governing body of the Fund which comprises representatives of the governments of all member states. The Fund elects its Chairman and two Vice-Chairmen in regular sessions which are held at least once a year. In addition, the exclusive committee is elected by the Assembly.¹²⁸ The duties of the Assembly are to adopt International Regulations necessary for the functioning of the Fund, to assign the Director, to adopt the annual budget, to give instructions to the Director and subsidiary bodies such as the Exclusive Committee and Working Groups of the Fund.¹²⁹

The Executive Committee of the Fund is constituted by 1971 Fund Convention and its functions are set out in the related provisions. Although these provisions are eliminated in 1992 Fund Convention, the Executive Committee is established by the Assembly with the same characteristics of 1971 Convention. Its most important duty is to make decisions for the settlement of claims against the Funds.¹³⁰

According to the Fund Conventions, the Secretariat includes the Director and the administrative staffs which are required by Fund.¹³¹ The Director is

¹²⁵*Ibid*, at p 264

¹²⁶*Supra* note 58, at p 242

¹²⁷*Supra* note 7, at p 129

¹²⁸*Supra* note 58, at p 242

¹²⁹*Supra* note 7, at p 129

¹³⁰*Ibid* at p 130

¹³¹Fund 1992, Article 28

considered to be the legal representative of the Fund and his functions are assigned by the Convention, Internal Regulations and the Assembly.¹³²

A unique characteristic of the IOPC Fund is the way it is financed. The persons who have received more than 150,000 tons of crude oil or heavy fuel oil in ports or terminal installations in a member state by maritime transportation are liable for financing the IOPC fund.¹³³ Each Contracting State is required to submit an annual report to the Director comprising the information of any person of the State who is liable to contribute to the Fund and the amount of oil each person has received in the relevant calendar year.¹³⁴ The Levies of contributions are determined on the basis of these reports.¹³⁵

3.2.2 Liability for the IOPC Funds

In order to fulfill the main purpose of the Fund,¹³⁶ the Fund Convention determines three circumstances under which the Funds are liable for paying

¹³²Fund 1992, Article 29 .1. His functions are described under the Article 29.2. as follows: “The Director shall in particular:

- (a) appoint the personnel required for the administration of the Fund;
- (b) take all appropriate measures with a view to the proper administration of the Fund's assets;
- (c) collect the contributions due under this Convention while observing in particular the provisions of Article 13, paragraph 3;
- (d) to the extent necessary to deal with claims against the Fund and carry out the other functions of the Fund, employ the services of legal, financial and other experts;
- (e) take all appropriate measures for dealing with claims against the Fund within the limits and on conditions to be laid down in the Internal Regulations, including the final settlement of claims without the prior approval of the Assembly or the Executive Committee where these Regulations so provide;
- (f) prepare and submit to the Assembly or to the Executive Committee, as the case may be, the financial statements and budget estimates for each calendar year;
- (g) assist the Executive Committee in the preparation of the report referred to in Article 26, paragraph 2;
- (h) prepare, collect and circulate the papers, documents, agenda, minutes and information that may be required for the work of the Assembly, the Executive Committee and subsidiary bodies.”

¹³³ Article 10.1

¹³⁴ Article 15

¹³⁵ *Supra* note 58, at p 243

¹³⁶“(a) to provide compensation for pollution damage to the extent that the protection afforded by the Liability Convention is inadequate;

(b) to give relief to shipowners in respect of the additional financial burden imposed on them by the Liability Convention, such relief being subject to conditions designed

compensation to the oil pollution victims who are not fully compensated under CLC provided as follows:

(a) because no liability for the damage arises under the 1992 Liability Convention;

(b) because the owner liable for the damage under the 1992 Liability Convention is financially incapable of meeting his obligations in full and any financial security that may be provided under Article VII of that Convention does not cover or is insufficient to satisfy the claims for compensation for the damage; an owner being treated as financially incapable of meeting his obligations and a financial security being treated as insufficient if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under the 1992 Liability Convention after having taken all reasonable steps to pursue the legal remedies available to him;

(c) because the damage exceeds the owner's liability under the 1992 Liability Convention as limited pursuant to Article V, paragraph 1, of that Convention or under the terms of any other international Convention in force or open for signature, ratification or accession at the date of this Convention.¹³⁷

In respect of the situations where no liability arises for the damage under the CLC, two cases are likely to occur. First, when the claimant is not capable of identifying the owner polluting vessel, second, when the shipowner is exempted from liability under the CLC.¹³⁸

Although being unable to identify the polluting ship should not be an obstacle for the claimant to be compensated the Funds, none of the Fund Conventions are liable when the claimant cannot prove from which vessel

to ensure compliance with safety at sea and other conventions;

(c) to give effect to the related purposes set out in this Convention.” Article 2.1(a)

¹³⁷Article 4.1, 1992 Fund Convention, 1971 version of the Convention has a similar provision

¹³⁸*Supra* note 7, 135

the oil spill has happened in case of an incident involving more than one ship.¹³⁹ In addition, the identified ship must fall within the definition of the “ship” under the Convention.¹⁴⁰

There are some exemptions from liability under the CLC which are wider than the exemptions under the Fund Conventions. The Fund is liable in situations where it is not exonerated such as when the damage:

- (a) resulted from a natural phenomenon of an exceptional, inevitable and irresistible character, or
- (b) was wholly caused by an act or omission done with the intent to cause damage by a third party; or
- (c) was wholly caused by the negligence or other wrongful act of any government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.¹⁴¹

In respect of situations under which the shipowner is unable to pay the compensation, three potential cases are likely to happen. Although the CLC is rather successful in preventing such situations by imposing compulsory insurance, there might still be some cases in which the pollution victims remain partly unpaid. First, this might be the case in situations where the ship is carrying less than 2,000 tons of oil as cargo. In such cases, the provisions of compulsory insurance do not apply.¹⁴² The second situation can be imagined when the insurance cover or other financial securities are not sufficient to cover the damage. The third situation is only theoretical and is not likely to happen in practice. It deals with the circumstance under which the owner of the ship does not comply with the compulsory insurance.¹⁴³

¹³⁹ Article 4.2 (b)

¹⁴⁰ *Supra* note 7, at p 136

¹⁴¹ *Ibid*

¹⁴² CLC Article VII.1

¹⁴³ *Ibid*, at p 138-140

The most popular claims against the Funds are in cases where the damage is more than the owner's liability limit. Although CLC 92 has decreased the probability of facing such situation, it is not yet fully prevented.¹⁴⁴

3.2.3 Exceptions to the Liability of IOPC Fund

As mentioned above, the Fund Conventions exonerate the Fund from liability in certain circumstances. However, the exemptions from liability of the Fund are less than the ones of the shipowner under the CLC. Therefore, recoverability of compensation for pollution damage under the Fund Convention is more in comparison with the CLC.

The first situation which the Fund Convention considers as a reason for exclusion of the Fund's liability is where the pollution damage resulted from an act of war, hostilities, civil war or insurrection.¹⁴⁵ The CLC has similar grounds for exoneration of the shipowner from liability.¹⁴⁶

The second circumstance which exempts the Fund from liability is when it is proved that the pollution damage was caused by an oil spill from a warship or other ship owned by a government and used for non-commercial service at the time of incident.¹⁴⁷ This has been also accepted under CLC as a basis of exception to shipowner's liability.¹⁴⁸

In addition, the Fund shall incur no obligation if the claimant cannot prove that the damage was caused by an incident involving one or more ships.¹⁴⁹

Furthermore, the Fund may be exempted from liability if it proves that the pollution damage resulted from an act or omission done intentionally. Accordingly, the 1992 Fund Convention refers to the 1992 CLC in order to determine the extent to which the Fund shall be exonerated. It has been stated that it shall be exonerated to the extent that the shipowner is exempted from liability under Article III, paragraph 3 of 1992 CLC.

¹⁴⁴*Ibid*

¹⁴⁵Article 4.2 (a)

¹⁴⁶CLC Article III.32(a)

¹⁴⁷Article 4.2 (a)

¹⁴⁸CLC, Article XI

¹⁴⁹Article 4.2 (b)

However, unlike the shipowner under the CLC, the Fund is not exonerated in respect of preventive measures.¹⁵⁰ Previously, the ambiguity of the former Fund Convention in the provision concerning this issue brought difficulties in practice. Although Article 4(3) of the 1971 provides that the preventive measures are always recoverable in the first sentence, its last part could be interpreted in a way that the preventive measures are not always recoverable.¹⁵¹ Therefore, it was amended in the new Convention

3.2.4 Limitation of Liability for the Funds

The compensation limit payable by the 1971 Fund was originally 450 million francs for any incident. Following the huge amount of damage caused by incidents such as the *Amoco Cadiz* in France 1978, the French government submitted a proposal to the Assembly of IOPC Fund by which the increase of maximum payment for the pollution damage by Fund was requested. The Assembly accepted to increase the compensation limit up to 675 million gold francs. Later the maximum of 900 million francs was accepted by the Fund Assembly.¹⁵²

Subsequent to the 1976 Protocol to 1971 Fund Convention, the unit of account for the compensation limit was changed from gold franc to the Special Drawing Right (SDR) as defined by the International Monetary Fund. As expressed under the 1976 Protocol, the amount of 15 gold francs is equal to 1 SDR. Therefore, 450, 675 and 900 million francs become 30, 45 and 60 SDRs respectively. In addition, irrespective of what maximum amount represents the compensation limit, it includes the compensation actually paid under the CLC 69 which works jointly with the 1971 Fund Convention.¹⁵³

In cases where the 1992 Fund Convention applies, the maximum amount payable by the Fund, as expressed under the Fund Convention 1992, is 135

¹⁵⁰1992 Fund Convention Article 4.3

¹⁵¹Abecassis, David W. *Oil Pollution from ships: International, United Kingdom and United States*, 2nd edition, at p 259

¹⁵²*Supra* note 7, at p 221-222

¹⁵³*Ibid*

million SDRs in respect of any one incident. Like the aggregate compensation in case of the Fund Convention 1971 which includes the compensation paid under CLC 1969, the Fund 1992 compensation limit includes the compensation actually paid by the shipowner under the CLC 1992.¹⁵⁴

Moreover, the convention considers a special case under which the maximum limit increases up to 200 million SDRs if the requirements are met which is unlikely to happen.¹⁵⁵

Furthermore, the same limit of liability is considered under the Fund Conventions for the pollution damage caused by a natural phenomenon of an exceptional, inevitable and irresistible character. Hence, the amount payable for pollution damage by the Funds in such circumstances shall not exceed 135 million SDRs.¹⁵⁶ And if there are more than one tanker involved in causing pollution damage, it applies to all of them without taking into account of how many ships spill oil.¹⁵⁷ This makes the Fund's liability much wider than CLC under which such pollution damage is excluded from shipowner's liability.¹⁵⁸

In cases where the Fund Convention 1971 is the governing legislation, a question may arise as to whether the interest awarded on claims against shipowners should be calculated according to the limit of liability of the Fund or it is to be considered as a supplementary award under national law. The CLC 69 does not clarify the matter in respect of the interest recovered by claimants either. If such interest is interpreted as the "Compensation actually paid under liability Convention" as specified under Fund Convention, it is to be deducted from the maximum liability incurred by

¹⁵⁴Fund Convention 1992, Article 4.4(a)

¹⁵⁵Fund convention 1992, Article 4.4 (c): "The maximum amount of compensation referred to in sub-paragraph (a) and (b) shall be 200 million units of account with respect to any incident occurring during any period when there are three Parties to this Convention in respect of which the combined relevant quantity of contributing oil received by persons in the territories of such Parties, during the preceding calendar year, equaled or exceeded 600 million tons."

¹⁵⁶Fund Conventions, Article 4.4 (b)

¹⁵⁷*Supra* note 58, at p 222

¹⁵⁸CLCs, Article, III.2(a)

Fund. The 1971 Fund has taken the latter position in discussions which arose following the *Haven* incident in 1991 although it was not accepted by the Court.¹⁵⁹

However, the 1992 Fund Convention has now clarified the issue by taking the opposite position to the 1971 Fund Convention as follows:

Interest accrued on a fund constituted in accordance with Article V, paragraph 3, the 1992 Liability Convention, if any, shall not be taken into account for the computation of the maximum compensation payable by the Fund under this article.¹⁶⁰

The same question may arise in respect of interest paid by the IOPC Fund. Although there is no provision which requires the Funds to pay interest, they have usually paid interest in accordance with the applicable national law. The question whether the interest paid by Fund should be taken into account in calculating the maximum liability or not could have been asked *Tanio* and *Haven* incidents. However, the interest was paid without any argument in both cases.¹⁶¹

The conversion of the unit of account into national currency under the Fund Convention used to be done in accordance with the same method used in CLC 69 before the Protocols to the CLC and Fund Convention were adopted. As mentioned earlier, the unit of account was changed from gold franc to SDR of the IMF. Whereas the 1976 Protocol to the CLC 69 entered into force in 1981, the Protocol to the Fund Convention entered into force in 1994. This delay caused some difficulties in converting the unit of account to national currency.¹⁶² These problems have been solved under the Fund Convention 1992 since the unit of account as provided by the Convention is SDR. Another issue which has been clarified under the 1992 Convention in

¹⁵⁹ *Supra* note 7, at p 146

¹⁶⁰ Fund 1992, Article 4.4(d)

¹⁶¹ *Supra* note 7, at p 147

¹⁶² For further information read *Supra* note 7, at p 148

this contest is the date of conversion which was previously not mentioned in the 1971 Convention.¹⁶³

3.2.5 Settlement of Claims

An important issue in respect of claims settlement is the time limit for proceedings. As provided by the Fund Convention, there is a risk of losing the right of compensation if an action is not brought to the Court or a notification as described in Article 7 of the Fund Convention is not made within the time limit of three years from the time of occurrence of the damage, provided that bringing an action shall not exceed the time limit of six years from the date of the incident which caused the pollution damage.¹⁶⁴ The time limit rules under the Fund Conventions are similar to the provisions in the CLC except the alternative of giving formal notification instead of bringing action. Such alternative gives more time opportunity to the claimants for bringing claims compared with the CLC.

Apart from the formalities which are necessary for the mentioned notification to be effective for preventing the right of compensation to be extinguished, there are some other issues which should be taken into account in this respect. The Executive Committee of the 1971 Fund stated that the notification of criminal proceedings in which a right to claim compensation is reserved but such claim is not put forward is not enough for the purpose of preventing the right of compensation to be extinguished. It is the same case if notice of a claim against the Fund is submitted to a claim office which has been established jointly by the Fund and the corresponding P&I Club after the incident.¹⁶⁵

Another matter for consideration related to settlement of claims against the Fund is the legal proceeding. The Director of the Fund is authorized by

¹⁶³1992 Fund Convention, Article 4.4(e): "The amount mentioned in this Article shall be converted into national currency on the basis of value of that currency by reference to the Special Drawing Right on the date of decision of the Assembly of the Fund as to the first date of payment of compensation."

¹⁶⁴1992 Fund Convention, Article 6

¹⁶⁵*Supra* note 7, at p 154

internal regulations to agree with any claimants to submit a claim to arbitration.¹⁶⁶ In case of disagreement, claimants may bring their action for compensation under article 4 of the Fund Convention against the Fund to a Court competent to deal with actions against the owner or their guarantors in respect of compensation for oil pollution damage under Article IX of the 1992 CLC.¹⁶⁷

However, if an action has already been brought before a competent Court against the owner or his insurer, the Court concerned is exclusively competent to deal with any action against the Fund in respect of the same pollution damage under CLC 1992.¹⁶⁸ If the Court before which action is brought is located in a Contracting State to the CLC but not to the Fund Convention, the claimant is entitled to bring the action against Fund either in a Court in a Contracting State to the Fund Convention or where the Fund has its headquarters.¹⁶⁹

If the Fund is not a party to a legal settlement and does not intervene in a legal proceeding of an action, it is not bound by any decision of the court. However, an exception is made in the Fund Convention itself. It is provided that each party to the proceedings of an action against the owner or his guarantor under the CLC for pollution damage is entitled to inform the Fund about the proceedings. If such notice is done in accordance with the corresponding national law, the Fund can intervene as a party to the proceedings. In such case, the Fund is bound by the judgment of the Court even if it has not actually intervened in proceedings.¹⁷⁰

Apart from the regulations of the claim settlements for compensation against the Fund, the practical aspects of the matter are worthy of mention. In this respect, the role of P&I clubs as liability insurers of the shipowners is significant. The P&I Clubs have been in cooperation with the Fund in

¹⁶⁶Reg. 7.3

¹⁶⁷Fund Convention, Article 7.1

¹⁶⁸Fund Convention, Article 7.3

¹⁶⁹*Ibid*

¹⁷⁰Fund Convention, Article 7.6

settlement of claims, for example by supporting the view of the Fund regarding which claims may be settled and pay when they are reasonable. In addition, P&I clubs agree on the uniform interpretation of the definition of “pollution damage” as a vital factor for achieving the purpose of CLC compensation. Moreover, they support the decisions of the Exclusive Committee of the Fund for environmental damage.¹⁷¹ The Fund and International Group of and P&I Clubs agreed a Memorandum of Understanding in order to establish mutual cooperation in investigation of incidents and assessment of the damage. Under this Memorandum, the clubs accept to report to the Fund any incident which might result in a claim against it in order to cooperate for preventing or minimizing the pollution damage.¹⁷²

The Fund recognizes the primary role of clubs in handling the claims. On the other hand, the clubs accept to consult the Fund when they are likely to be involved in claims against them. Accordingly, Funds and Clubs agree through the Memorandum to cooperate in instructing experts to advise on clean-up or evaluate claims. It is also agreed to share the costs in proportion to their liability for claims.¹⁷³

3.2.6 Rights for Recourse and Subrogation

The subrogation right of the Fund against the shipowner and his guarantor lies in Article 9 of the Fund Convention as follows:

1. The Fund shall, in respect of any amount of compensation for pollution damage paid by the Fund in accordance with Article 4, paragraph 1, of this Convention, acquire by subrogation the

¹⁷¹*Supra* note 58, at p 248

¹⁷²*Supra* note 7, at p 150

¹⁷³*Ibid*

rights that the person so compensated may enjoy under the 1992 Liability Convention against the owner or his guarantor.¹⁷⁴

The need for recognizing such right was due to the problems which might happen in practice in assigning the liability of the Fund. As mentioned earlier, one of the circumstances under which compensation is payable by the Fund is where it is proved that the compensation is not recoverable by the owner of the ship or his guarantor or it is not adequate. Since usually it is a long process to prove the case, the Fund pays compensation and takes the rights of the claimants against the owner and his insurer by subrogation. This prevents undue delay in the settlement of claims for compensation.¹⁷⁵

In addition, the Fund Convention also provides for rights of recovery by subrogation against third parties:

2. Nothing in this Convention shall prejudice any right of recourse or subrogation of the Fund against persons other than those referred to in the preceding paragraph. In any event the right of the Fund to subrogation against such person shall not be less favourable than that of an insurer of the person to whom compensation has been paid.¹⁷⁶

There are several cases in which oil pollution is caused by the fault of persons other than the owner of the ship such as the manager, charterer, salvor or pilot in addition to cases where the oil pollution results from an incident for which the owner of the other vessel is to blame.¹⁷⁷ Therefore, a right to bring an action against liable third parties is determined for either the shipowner or any other party who suffers from the damage. This right transfers to the Fund by subrogation once it pays the compensation.¹⁷⁸

¹⁷⁴Fund Convention 1992, Article 9.1

¹⁷⁵*Supra* note 7, at p 155

¹⁷⁶Fund Convention 1992, Article 9.2

¹⁷⁷Although no claims are usually brought against pilots, charterers, managers, operators, etc. under the CLC, the right of recourse is preserved for the owner of the ship against such parties or third parties responsible for the damage.

¹⁷⁸*Supra* note 7, at p 156

Moreover, the Fund is entitled to recover the compensation it has paid to the victims of oil pollution if such victims are eligible to bring a recourse action against third parties.¹⁷⁹

Finally, the right of subrogation against the Fund for the third parties who have paid compensation is recognized under the Fund Convention.

Without prejudice to any other rights of subrogation or recourse against the Fund which may exist, a Contracting State or agency thereof which has paid compensation for pollution damage in accordance with provisions of national law shall acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.¹⁸⁰

The most common example of such right for other parties which may exist is the right of a P&I club which has paid compensation for pollution damage to the victim and seeks recovery of its payment from the Fund.¹⁸¹

3.3 Bunkers Convention

The origins of the Bunkers Convention may be traced to a proposal which was submitted to the thirty-sixth session of IMO's MEPC in 1994 by Australia, and the seventy-third session of Legal Committee in 1995.¹⁸²

The main importance of this Convention is that it plugs the loophole in the convention regime of ship-source pollution which existed before it came into force. Therefore, all substances which may spill from the ships are covered by liability and compensation regime under international

¹⁷⁹*Ibid* at p 157

¹⁸⁰Article 9.3

¹⁸¹*Supra* note 7, at p 158

¹⁸²Martinez Gutierrez, Norman A., *Limitation of Liability in International Maritime Conventions: The relationship between global limitation conventions and particular liability regimes*, Routledge, 1st edition, at p 159

conventions.¹⁸³ The Bunkers Convention is also of importance since almost half of the pollution claims are caused by Bunker spills.¹⁸⁴

The Bunkers Convention follows the patterns of the CLC and HNS in many aspects. However, there are certain significant differences which are discussed in the following sections.

3.3.1 Scope of Application

3.3.1.1 Geographical Scope of Application

The Bunkers convention provides the same geographical scope of application of the CLC 92 as follows:

This Convention shall apply exclusively:

(a) to pollution damage caused:

(i) in the territory, including the territorial sea, of a State Party, and

(ii) in the exclusive economic zone of a State Party, established in accordance with international law, or, if a State Party has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;

(b) to preventive measures, wherever taken, to prevent or minimize such damage.¹⁸⁵

In accordance with this article, the location where damage occurs is of a great importance in determining the scope of application whereas the place where the oil actually spills is not relevant. Consequently, the Convention may apply to an oil spill occurring outside the geographical scope of the Convention such as high seas but its consequent pollution damage has affected the territorial sea or exclusive economic zone of a contracting

¹⁸³P. Griggs, *A Busy Schedule for International Maritime Law*, 4(1) S.& T.L.I. (2003) 29

¹⁸⁴Chao Wu, *Liability and Compensation for Bunker Pollution*, *Journal of Maritime Law & Commerce*, 33(4), 2002, at p 555

¹⁸⁵Bunkers Convention, Article 2

state.¹⁸⁶ In addition, the nationality of the defendant is not related to the issue. However, paying compensation for the measures taken for preventing or minimizing the pollution damage is excluded from the geographical limit of the Convention stated in the first part of the mentioned article.¹⁸⁷

3.3.1.2 Preventive Measures

As provided under the last part of the provision mentioned above, the scope of application of the Convention is not limited to geographical scope. It is provided that the Bunkers Convention applies also to measures that are taken to prevent or minimize the damage in such areas mentioned in Article 2(a) of the Convention regardless of where they are taken.¹⁸⁸ Therefore, the Convention applies if the preventive measures are taken outside the geographical scope of the Convention but to prevent or minimize pollution within such area. In practice, it is not unlikely that take preventive measures will be taken on the high-seas where the incident is occurred there, but it is probable that the damage will affect the territorial sea adjacent to the incident if the measures are not taken.¹⁸⁹

The definition of preventive measures is identical to the corresponding provision under CLC 92 which has been discussed earlier.

3.3.1.3 Exclusion from the Scope of Application

The Bunkers Convention excludes the application of the Convention from “the pollution damage as defined in the Civil Liability Convention, whether or not compensation is payable in respect of it under that Convention”.¹⁹⁰

As discussed earlier, the 1992 CLC applies to vessels constructed or adapted for carrying oil as cargo in their bulk. In addition, the multiple purpose vessels shall fall within the scope of the Civil Liability Convention when they are carrying oil on board or they have residues of persistent oil from their previous voyages. Consequently, the Bunkers Convention applies to

¹⁸⁶*Supra* note 57, at p 24

¹⁸⁷*Ibid*

¹⁸⁸Bunkers Convention, Article 2(b)

¹⁸⁹*Supra* note 184 at p 45, *Supra* note 57 at p 25

¹⁹⁰Bunkers Convention, Article 4.1

pollution damage from non-oil tankers and oil tankers not actually carrying neither oil nor residues of oil on board.

This general exclusion of the Bunkers Convention may result in serious difficulties in the interpretation of the scope of application. The most significant problem may arise from the phrase “whether or not compensation is payable under the 1992 Civil Liability Convention”. In this respect, a situation can be imagined in which pollution damage occurs by reason of an oil spill from a laden tanker in a non-contracting State to CLC but which is a party to the Bunkers Convention. Since the pollution damage is within the ambit of CLC 1992, the Bunkers Convention will not apply. Accordingly, the pollution damage is covered by neither of the Conventions. A similar situation may occur where a State is a party to 1969 CLC and Bunkers Convention but not to CLC 1992. If an oil spill occurs in such State from an un-laden tanker which has residues of persistent oil from previous voyage on board, none of these Conventions would apply. The case is excluded from the 1969 Convention since it only applies to the tankers actually carrying oil, and the Bunkers Convention would not cover the case because the damage falls within the definition of pollution damage under 1992 CLC.¹⁹¹

The Bunkers Convention excludes also the application of the Convention from the pollution damage caused by “warships, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on Government non-commercial service”.¹⁹² However, each State party is entitled to include concerning ships to this Convention provided that it shall declares the conditions and terms of such application to Secretary-General by notification.¹⁹³

3.3.2 Scope of Liability

The provisions relating to the scope of liability of the Bunkers Convention does not follow the pattern of the CLC unlike other provisions similar to the

¹⁹¹Jacobsson, Måns, *Bunkers Convention in Force*, (2009) 15 JIML, at p 24-25

¹⁹²Bunkers Convention, Article 4.2

¹⁹³Bunkers Convention, Article 4.3

latter Conventions. The reason of this difference is due to the single-tier regime of the Bunkers Convention which is completely different from the previous Conventions connected to oil pollution liability. As discussed earlier, the IOPC Fund established a two-tier regime for oil pollution liability, and the damage is subject to a three-tier system if the state where the oil spill is occurred is a member of the Supplementary Fund. Although in some states a domestic fund may pay the compensation for pollution damage where the compensation payable under the Bunkers Convention is not adequate, there is no international Fund of this kind which co-operates with this Convention. Instead, a wider range of persons are liable under this Convention as will be discussed in more detail below.¹⁹⁴

The liability for pollution damage under the Bunkers Convention attributes to the owner of the ship as stated below:

Except as provided in paragraphs 3 and 4, the shipowner at the time of an incident shall be liable for pollution damage caused by any bunker oil on board or originating from the ship, provided that, if an incident consists of a series of occurrences having the same origin, the liability shall attach to the shipowner at the time of the first of such occurrences¹⁹⁵

3.3.2.1 Relevant Definitions

In order to determine the boundaries of the ambit of shipowner's liability, it is necessary to know the definitions of the terms lies in this Article such as "ship", "shipowner", "bunker oil", and "pollution damage" as defined by the Convention. Some of the definitions are identical to the CLC whereas some of them have been changed.

Unlike the definition of ship under the CLC which only applies to oil tankers, more classes of ships are included in the Bunkers Convention by defining the ship as "any seagoing vessel and seaborne craft, of any type whatsoever".¹⁹⁶ Moreover, including the phrase "sea going craft" in addition

¹⁹⁴Charls De La Rue, C.B. Anderson, *Shipping and the Environment: Law and Practice*, LLP, 2009, at p 260

¹⁹⁵Bunkers Convention, Article 3.1

¹⁹⁶Bunkers Convention, Article 1(1)

to “sea going vessel”, may be interpreted as embracing the different kinds of offshore units into the ambit of the Convention.¹⁹⁷ It is submitted that only fuel craft as would carry bunker oil would be included.

Another important definition provided by the Convention is related to the term “shipowner”. It is of great importance since it is the shipowner to whom the liability attributes under the Convention. While drafting the provision concerning the definition of the shipowner in IMO Legal Committee meetings, the delegates came up with deciding between two proposals. The first proposed definitions reflected the Article 1(2) of the 1976 International Convention on Limitation of Liability for Maritime Claims (1976 LLMC). The supporters of this option argued that the shipowner under Bunkers Convention is entitled to limit his liability under national or international law which is LLMC in many cases. Hence, its definition is more compatible to Bunkers Convention. The second option proposed by other delegates was the same definition provided by the CLC due to the similarity of its pattern to the Bunkers Convention in many provisions.¹⁹⁸ While the definition of shipowner under the CLC only embraces the registered owner of the ship, the first proposal draft of the provision presented a wider meaning of the shipowner including “the registered owner, bareboat charterer, manager and operator of the ship”. Eventually, the IMO Legal Committee accepted the first option under which a wide range of persons are held liable as the owner of the ship.¹⁹⁹ The reason for accepting such a broad definition was the possibility of owner, operator and demise charterer to be involved in operation of the vessel, so that imposing liability on such persons makes them more responsible in operating in order to prevent or minimize the oil spill damage.²⁰⁰ On the

¹⁹⁷*Supra* note 194, at p 259

¹⁹⁸CLC, Article I (3): ““Owner” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However in the case of a ship owned by a State and operated by a company which in that State is registered as the ship’s operator, “owner” shall mean such company.”

¹⁹⁹*Supra* note 57, at p 26-27, See also Article 1(3) of Bunkers Convention

²⁰⁰*Supra* note 191 at p 26, Report of Legal Committee’s 77th session, IMO document LEG 77/11 para 126.

other hand, the registered owner is defined independently which is very similar to the definition of the shipowner under CLC.²⁰¹

The word “bunker oil” for the purpose of the Convention is defined as “any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil”.²⁰² This definition differs from what is provided for “oil” under CLC. The Civil Liability Convention only covers pollution from persistent oil, but the Bunkers Convention applies to pollution damage caused by oil regardless of whether it is persistent or non-persistent.²⁰³ Furthermore, “residue” is also included in the definition which embraces more pollution cases fall within the scope of application that impose liability on the owner. The definition of terms “incident” and “pollution damage” is identical to same meaning used in corresponding provisions under CLC.²⁰⁴

3.3.2.2 Persons liable under the Convention

As mentioned above, the Convention imposes liability on the shipowner with a definition including a large number of persons.²⁰⁵ Therefore, it is possible that there is more than one person liable for the pollution. Accordingly, it is provided by the Convention that in such case the persons who are defined as “shipowner” under the definition of the mentioned provision shall be jointly and severally liable for the damage.²⁰⁶ However, there is no provision describing how the liable persons should distribute their liabilities. So the national law applies to determine the liability of each person.²⁰⁷

²⁰¹Bunkers Convention, Article 1(4): ““Registered owner” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship’s operator, “registered owner” shall mean such company.”

²⁰²Bunkers Convention, Article 1.5

²⁰³CLC, Article I.5

²⁰⁴See previous section

²⁰⁵Article 3.1

²⁰⁶Article 3.2

²⁰⁷*Supra* note 191, at p 26

In addition; where there is more than one ship involving in an incident, the shipowners of all ships are jointly and severally liable for the pollution damage if it is not possible to separate the damage.²⁰⁸

The provisions of the several and joint liability are of importance in a case where the ship is not subject to the compulsory insurance provisions so that the victims do not avail the right of direct action against the insurer of the shipowner. If the liabilities of the registered owner are not satisfied due to the absence of insurance, the victim is able to get compensation from the bareboat charterer, manager or operator of the ship by bringing claim against their assets.²⁰⁹

These provisions may also be significant where the claimant is entitled to bring action against the assets of one of the defendants who are guilty of conduct barring the right of limitation. Its greatest importance may be in a case where the state in which pollution damage is occurred is not a party to LLMC, and the applicable national law does not extent the right of limitation to parties other than the registered owner such as the bareboat charterer, the manager and the operator of the ship. At the same time, such person who is not able to limit his liability has assets against which the claimant can bring action.²¹⁰

3.3.2.3 Channeling of the Liability

It is mentioned in the previous sections that the CLC imposes liability only on the registered owner of the ship. Furthermore; although a claimant is entitled to bring an action in tort against other persons liable outside the framework of the Civil Liability Conventions, it is not possible to bring an action against other persons such as servants and agents of the registered shipowners as in the case of CLC 1969; and where CLC 1992 is in force the rule applies also to the pilots, charterers, managers, operators, salvors, persons who take preventive measures, and their agents and servants.²¹¹ In

²⁰⁸Bunkers Convention, Article 5

²⁰⁹*Supra* note 194 at p 261

²¹⁰*Ibid*

²¹¹CLC, Article III.4

other words, the liability of these persons is channeled to the shipowner under the Civil Liability Conventions.

While drafting the Bunkers Convention, the delegates had a long debate whether to insert channeling provisions similar to the Civil Liability Conventions or to eliminate them. Whereas the earlier drafts of the Convention proposed by some delegates included the channeling provisions, the other delegates opposed their proposal. Moreover, a Diplomatic Conference was held in 2001 for supporting the view that it is necessary to preserve the channeling provisions. The conference was held by the organizations representing the industries of shipping, insurance and salvage. In spite of their considerable efforts, the Bunkers Convention was drafted finally with no provisions containing the channeling liability provisions. Therefore, the claims against mentioned persons are not excluded under the Convention. The most important reason for which it was accepted to preserve the right of action against range of persons outside the Convention was the fact that there is no second tier of compensation under the Bunkers Convention in case the victims are not capable of being paid under the Convention itself.²¹²

However, the Contracting States may decide to include channeling provisions in their national jurisdiction. In this respect, a resolution was accepted by the 2001 Diplomatic Conference which invited the States to consider the need for channeling of liability of the persons taking the preventive measures in their national legislation when they are implementing the Bunkers Convention. It was recommended by the resolution to take the same position as in the CLC under which the persons taking the preventive measures are exempted from liability unless the liability resulted from a behavior which CLC would not entitle them to be protected against claims.²¹³

Since the States are free to follow the recommendation of the resolution, they have made different decisions in this respect. Some States such as Denmark, Finland, Malaysia, Malta and United Kingdom have introduced

²¹²*Supra* note 194 at p 27,28

²¹³*Ibid*

channeling provisions in their national legislation without taking into consideration of the exception which CLC has provided. Spain has included the channeling liability provisions with following the position of the CLC whereas other State Parties, namely, Australia, Cyprus, Germany, Greece, Ireland, Liberia, Poland and Vanuatu have not introduced any channeling provisions in their national legislation.²¹⁴

3.3.2.4 Limitation of Liability

As discussed earlier, the CLC has established a special regime for limitation of liability under which the corresponding defendants may limit their liability up to a certain amount. In contrast, the Bunkers Convention does not have such regime in this respect but simply refers the issue to the applicable national or international legislation as follows:

Nothing in this Convention shall affect the right of the shipowner and the person or persons providing insurance or other financial security to limit liability under any applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.²¹⁵

Accordingly, all related issues to liability limitation such as amount of limitation, constitution of limitation found are referred to other applicable international or national regimes.²¹⁶

As the provision has exemplified, the most probable international regime to be applicable is the Convention on Limitation of Liability for Maritime Claims 1976 (LLMC), in both original version or amended by its protocol. For the purpose this Convention the term “shipowner” is defined as the owner, charterer, manager and operator of the ship, so that all these persons are entitled to limit their liability.²¹⁷

The independent regime for limitation of liability under the CLCs and HNS Convention is more convenient from the point of the victims. The limitation

²¹⁴ *Ibid*

²¹⁵ Bunkers Convention, Article 6

²¹⁶ *Supra* note 57, at p 152

²¹⁷ LLMC, Article 1.2: “The term “shipowner” shall mean the owner, charterer, manager and operator of a seagoing ship.”

amount provided by these Conventions is available for the claims defined by the corresponding Convention whereas the limitation amount for claims under the Bunkers will have to be determined in accordance with other types of claims under the applicable regimes such as LLMC.²¹⁸

The linkage of the Bunkers Convention in respect of limitation of liability to other regimes has become a source of uncertainty in different aspects. First, there is no certain amount of limitation since it depends on the state where the pollution damage occurred. Whereas 1976 LLMC is still applicable in some Contracting States, it has been replaced by the 1996 Protocol with higher limits in other States. There are some States which are not party to LLMC, instead, ratified The International Convention relating to Limitation of Liability of the Owners of Sea-Going Ships 1957, and some others which are still party to The International Convention for Unification of Certain Rules relating to the Limitation of Liability of Owners of Sea-Going Vessels 1924 with different limitation amounts. There are also some States which have not ratified any international convention so that the national legislation determines the limitation amount. If a Contracting State to the Bunkers Convention which is neither a party to the mentioned international conventions relating to limitation of liability nor has national legislation. In this case, the liability of the owner will be unlimited.²¹⁹

Another difficulty arises where LLMC is in force since the list of limitable maritime claims does not include claims for pollution damage. Although some typical categories of maritime claims which derive from oil pollution damage such as claims for property and clean-up costs may fall within the list of maritime claims under LLMC, there are some cases where it is not clear to which category of the LLMC the claims are subject. Although this issue was submitted to the IMO by CMI, the Committee did not change the draft but confirm that the intent of the Convention is that such liability should be subject to limitation provisions of the LLMC.²²⁰ In addition,

²¹⁸*Supra* note 191, at p 29

²¹⁹*Supra* note 57 at p 561

²²⁰*Supra* note 194 at p 263

wreck removal claims fall within the list of limitable maritime claims.²²¹ However States are entitled to exclude such claims from the right of limitation of liability by reservation.²²²

There are differences between the regimes adopted by the CLC and LLMC in respect of liability limitation. First, it is necessary for the shipowner to establish a fund equal to the amount of his liability limit in order to avail his right of limitation under CLC. In contrast, the constitution of such a fund is not a condition for the owner in order to entitle him to the right of limitation under the LLMC. However, the LLMC provides that a State party may be subject to its national legislation under which a person is obliged to constitute a limitation fund in order to invoke the right of limitation in the courts.²²³ Another difference is that under CLC the costs that the owner pays for preventive measures are taken into account in his limitation fund which is in contrast with the position of the LLMC.²²⁴

It is noteworthy to mention that an owner will lose his right of limitation if he is guilty of conduct barring limitation under LLMC.²²⁵ Generally; if the limitation of claims of the Bunkers Convention is to be determined subject to LLMC, other persons who are jointly liable should not be deprived from their right of limitation. In practice, however, it is likely that both liable persons will be considered to be the same since there is a close relationship between the management and ownership structures.²²⁶

²²¹LLMC, Article 2.1(d): “claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship”

²²²LLMC, Article 18.1: “Any State may, at the time of signature, ratification, acceptance, approval or accession, reserve the right to exclude the application of Article 2 paragraph 1(d) and (e). No other reservations shall be admissible to the substantive provisions of this Convention.”

²²³LLMC, Article, 10 & 11

²²⁴*Supra* note 194 at p 263

²²⁵LLMC, Article 4: “A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.”

²²⁶*Supra* note 191, at p 30

3.3.3 Compulsory Insurance

As in the case of the Civil Liability Convention, a system of compulsory insurance is provided by the Bunkers Convention with a distinction that non-tankers are to be covered by such insurance.²²⁷ The registered owner of any ship of more than 1,000 gross tons is the person who is bound by the Convention to maintain insurance or other financial security such as bank guaranty to cover his liability for pollution damage.²²⁸ A certificate is also required to be issued verifying that the insurance or other security is in force. Such certificate is to be issued by appropriate authority of the State where the ship is registered if the State of ship's registry is a contracting state to the Convention. If the ship is not registered in a state party, the concerning certificate is to be issued by the appropriate of any contracting state.²²⁹ Accordingly, the victims of oil pollution are entitled to bring action directly against the insurer or other person providing security whose name is registered in such certificate.²³⁰

Although most of the provisions relating to compulsory insurance, its relevant certificate and the right of direct action against the insurer are similar to those provided by CLC, there are some distinctive provisions under Bunkers Convention in this respect. Such difference is due to the fact that provisions of liability limitation are linked to the other regimes. The direct liability of the insurer is limited to "the amount equal to limits of liability under the applicable national or international limitation regime but in all cases, not exceeding an amount calculated in accordance with the Convention on Limitation of Liability for Maritime claims, 1976, as amended".²³¹ This provision is related to direct liability of the insurer. It means that the claimant is entitled to bring direct action against the insurer up to this amount without advantage of any policy defense which could be invoked in defense of a claim for indemnity under the policy. Apart from the

²²⁷ *Supra* note 194, at p 264

²²⁸ Article 7.1

²²⁹ Article 7.2

²³⁰ Article 7.10

²³¹ Article 7.1

direct action, the insurer may be liable for larger amount of where the insurance covers risks for amounts greater than those required by the Convention.²³²

Another reason which has made the provisions of compulsory insurance under the Bunkers Convention distinctive to those provided under CLC is the broad definition of ships under the Bunkers Convention. The compulsory insurance may apply to some kinds of ships which are not within the scope of LLMC. This may result in the involvement of much greater administrative burdens in certifying all kinds of ships covered by the Convention.²³³

As in the case of CLC, the shipowner is exempted from liability under the Bunkers Convention where the pollution damage is wholly caused by the intentional act of a third party. In recent years a concern has been arisen that the insurance cover available is limited in cases where a negligent shipowner (as defined by the Convention) is held liable for pollution damage if it is caused by acts of terrorism. Such risks were covered under the CLC by standard P&I insurance cover but P&I clubs excluded acts of terrorism from their standard cover after the terrorist attack in the USA on 11 September 2001. Instead, the shipowners included risks of terrorism into their war risks policy provided by war risks insurers. The terms of such insurance policy are not free from the special nature of the risks such as the right to cancel cover on seven days' notice. The clubs also provide war risks cover but it is limited to the excess of shipowner's primary war risks cover.²³⁴

²³²*Supra* note 194 at p 264

²³³*Ibid*

²³⁴*Supra* note 191, (2009) 15 JIML, at p 30

4 Role of Insurance Business and P&I Clubs in respect of Oil Pollution Liabilities

There are a number of insurers who provide cover for third party liabilities and expenses arising from operating or owning a vessel. However, 90 percent of sea-going merchant vessels are covered by liability insurance including those related to oil pollution by entering the ship into a P&I club.²³⁵ The wide coverage of P&I Clubs for oil pollution damage is designed to satisfy the requirement of compulsory insurance imposed by CLC on their contracting states. As a general rule, insurance companies and Hull Clubs cover first-party insurance whereas P&I Clubs cover third party liabilities.²³⁶

Since the significant role of P&I Clubs in respect of oil pollution liabilities is undeniable, this part is devoted to examining rules relating to coverage for oil pollution which are almost always subject to the same pattern in different P&I Clubs.

4.1 Coverage for Oil Pollution Liability Risks

Compared with different kinds of liability risks, oil pollution insurance coverage is significant since it is subject to special terms. Firstly, it is subject to a specific limit of indemnity. This limit has been set at US\$ 1 billion under a standard cover since 2000. Secondly, oil pollution liabilities for tankers which trade to or from the US in American waters are not covered. Payment of an additional premium under the US Oil Pollution Clause is needed in order to insure the risk.²³⁷

²³⁵ *Supra* note 194 at p 730

²³⁶ *Supra* note 20 at p 204

²³⁷ *Supra* note at p 732

4.1.1 Damages

Shipowners are indemnified by their P&I Clubs in respect of the damages and compensation payable by them resulting from pollution incidents. However, it should be considered that the clubs cover only the liabilities incurred by their members for being the registered owner of a ship not a cargo owner. There might be some cases in which the owner, importers or exporters of oil are held liable under legislation. Such liabilities are not covered by their P&I clubs even if they are at the same time owner of the vessel. Among the international Conventions governing liability of owners to compensate victims of oil pollution, as discussed earlier, the Fund requires compensation to be paid by traders rather than shipowners or their insurers. In contrast, both versions of CLC impose liability to pay compensation on shipowners and their P&I Clubs. Therefore, the shipowners usually enter into a contract with P&I Clubs to meet the compulsory insurance that is required by the Conventions to ensure that owners are capable of paying compensation to potential victims of oil pollution. Accordingly, the P&I Clubs recommend their members while entering into a charterparty to insert a clause stating that in return for providing the required insurance certificate under CLC, the owner will not be liable for additional security under any national legislation and the charterer will be responsible if any loss occurs due to lack of additional security.²³⁸

4.1.2 Preventive Measures and Clean-up expenses

Following a casualty, the most urgent priority is usually to take any necessary measures to prevent or minimize the pollution and clean-up the contamination resulting from the incident. In many cases, the local government of the state affected by the casualty will undertake the major work of such operation. The expenses which are owed to the authorities by

²³⁸Steven J. Hazelwood, *P&I Clubs: Law and Practice*, LLP, 2000 at p 219

the owner of the offending ship would be indemnified by the P&I Club which covers his financial liabilities determined under international conventions. In other cases, the shipowner may take appropriate steps to prevent or minimize pollution. In some national legislation, it is a requirement that the shipowner should be engaged in preventive measures or clean-up operations, and they are also encouraged to do so under international conventions.²³⁹

The costs for preventive measures and clean-up operations would qualify for reimbursement from the club under the rules of sue and labor costs. However, the clubs normally include an express rule which provides cover for such expenses.²⁴⁰

4.1.3 Expenses for Complying with Governmental Orders and Directions

Generally, the coverage of standard P&I Clubs includes any expenses incurred by the shipowners as a result of complying with official orders or directions given by government or authorities of the coastal state affected by the casualty in order to prevent or minimize pollution. The claims in relation to such cover are in the nature of costs rather than liabilities.²⁴¹

Since such costs are not as a result of voluntary actions taken by the shipowner, they do not fall within the provisions of preventive measures under CLC, and are excluded from the P&I Club cover for costs of preventive measures.²⁴²

However, not all costs resulting from complying with official orders are included in P&I Club cover. If complying with the official order is part of a normal operation or repair of the ship, the club does not cover the expenses. In addition, the expenses which are recoverable by the hull insurers as being a part of salvage charges or falling within the Pollution Hazard Clause in a

²³⁹*Supra* note 194, at p733

²⁴⁰*Ibid*, See also *supra* note 238 at p 221

²⁴¹*Ibid*

²⁴²*Supra* note 194 at p 733

hull insurance policy or falling within the general average such as entering a port of refuge which will not be recoverable by the P&I Club.²⁴³

4.1.4 Cover for Damage and Contamination

A wide range of claims in respect of liability to third parties are likely to arise from an incident. For example, public authorities may bring claims against the owners for the expenses of their own preventive measures. Likewise, the private parties may have claims for damage to their personal property, such as contamination of a fishing farm or fouling of a fishing ship. In addition, fishermen, hoteliers and persons whose income depends on the carriers located in the contaminated coast may claim for loss of profits or earnings.²⁴⁴

The standard clubs normally cover for such liabilities and include them by expressed wide terms. Therefore, any liability for loss, damage and contamination resulting from the discharge or escape of oil from an entered vessel, or threat of such escape or discharge is included by club cover.²⁴⁵

4.1.5 Liability to Salvors

The salvors are encouraged by the salvage law to make their attempts in order to prevent or minimize the pollution damage in recent years. Initially, it was provided under the Lloyd's Open Form of Salvage (LOF 80) that a salvor was entitled to recover his reasonable expenses together with 15 % of increment on them from the owner in case where he was not awarded the salvage remuneration due to failure of the salvage operation.²⁴⁶ This "safety net" payment which was an exception to "no-cure no-pay" principle guarantees that the salvors are encouraged to make efforts when likelihood of being successful in a salvage operation is weak. The LOF 80 and the new system of "safety net" led to a debate as to whether it is the responsibility of the hull underwriters to pay the safety net or the liability insurers.

²⁴³*Supra* note 238 at p 221

²⁴⁴*Supra* note 194 at p 734

²⁴⁵*Ibid*

²⁴⁶Clause 1(1)

Traditionally, the maritime claims relating to salvage awards were met by the hull insurers and those relate to oil pollution liability were met by P&I Clubs. It is obviously the duty of the salvor to perform the “safety net” services as a part of his overall salvage operation. However, it is argued that when the salvor is attempting to save a ship which might cause oil pollution damage, he is assisting the owner of the ship to prevent or minimize pollution and in this way he is assisting him to sue and labor and reduce his liability. In order to decide the issue, the International Group of P&I Clubs, the Institute of London Underwriters, and the Lloyd’s Underwriters’ Association made an arrangement called “the Funding Agreement” in 1980 under which the clubs are required to reimburse the “safety net” payment and the hull insurers would continue to pay salvage awards.²⁴⁷ This also reflects the fact that the safety net is to be paid by the shipowner not the cargo owner, and the system does not work unless the payment is guaranteed by P&I Clubs.²⁴⁸

The salvage Convention 1989 adopted not only the provisions of the LOF 80, but also went beyond the Form. Whereas the LOF 80 applies solely to laden tankers, the Salvage Convention covers all kinds of ships.²⁴⁹ In addition, the Salvage Convention includes provisions under which a salvor who has practiced salvage operation but failed to receive a reward is entitled to get special compensation from the owner of the vessel which threatened the environment.²⁵⁰ However, this special compensation is payable only if the expenses incurred by the salvor in respect of the operation exceed a normal salvage reward under article 13 of the Convention.²⁵¹

These principles were included in the new version of the Salvage Convention and LOF 90. Moreover, another Funding agreement in 1990 was called under which the P&I Clubs are required to indemnify their

²⁴⁷*Supra* note 238, at p 222

²⁴⁸Brice, G, *Marine Insurance at the Turn of Millennium*, Vol. 2 edited by Marc Huybrechts, Eric Van Hooydonc and Christian Dieryck, The European Institute of Maritime and Transport, at p 97

²⁴⁹Salvage Convention, Article 1(b)

²⁵⁰Salvage Convention Article 14.1

²⁵¹Salvage Convention Article 14.

members if they pay special compensation to the salvors. In 1995, the Lloyd's open Form was revised again. The LOF 95 has not been changed and mirrors the terms of the Salvage Convention 1989. Finally, the Lloyd's Open Form was amended to the current version, LOF 2000.

The P&I Club also updated rules in accordance with the new principles under the amended Salvage Convention, so that cover for special compensation is available where the Convention imposes such liability to the owners.²⁵²

The Article 14 Special Compensation led to various difficulties for both insurers and salvors such as assessing the amount of special compensation or measuring the potential damage prevented by the salvors which cause expensive and time consuming arbitrations.²⁵³ Such difficulties resulted in ambiguity as to when a situation moves from article 13 which provides for the liability of hull underwriters to pay a salvage reward to article 14 which indicates the P&I Clubs duty to pay special compensation.²⁵⁴

Eventually, all these matters compelled the involved groups such as P&I clubs, ISU and London Maritime Property underwriters to find a solution for supporting the salvage industry. Since they could not change the law, they decided to make it by means of an agreement. Therefore, they chose LOFs in order to add whatever the parties wished to. All these efforts concluded to the birth of SCOPIC (Special Compensation P&I Clause) incorporated within the Lloyd's forms.²⁵⁵ Accordingly, the P&I Club rules provide reimbursement to the owners who have paid the salvor either under the terms of SCOPIC or the Salvage Convention or an agreement approved by the club.²⁵⁶

²⁵²*Supra* note 194 at p 736

²⁵³For further information see Geoffrey Brice, *Salvage and The Role of Insurer*, Lloyd maritime and Commercial Law Quarterly, Feb 2000

²⁵⁴*Supra* note 238, at p 223

²⁵⁵Simon Baughen, *Shipping Law*, 2009, Routledge Cavendish, at p 307

²⁵⁶*Supra* note 194 at p 736

4.1.6 Cover for Fines

Generally, most P&I Clubs provide cover for specific types of fines which may be imposed on members for breach of pollution regulations by competent authorities.²⁵⁷

However, the Club Rules are normally subject to certain limits. For example, they exclude fines and penalties resulting from the overloading, or where it is not complying with MARPOL regarding the construction, adaption or equipment of vessels.²⁵⁸

The Club Rules usually classify the penalties for which cover is available into two categories: First, fines arising from accidental charges which are covered by the club as of right. Second, fines resulting from intentional discharges. The indemnification for such fines is dependent to the discretion of the Club Board.²⁵⁹

The Coverage for the penalties resulting from accidental discharges of oil or other substance is subject to the criteria provided by the Club Rules. In addition, it may also apply to fines imposed on persons other than the owner, such as the master of a ship or other seaman. In such cases, the possibility to be covered by the Club is subject to liability of the owner who is a Club member. If he is legally liable to indemnify the seaman, he is likely to be reimbursed by the club.²⁶⁰

As in the case of penalties resulting from intentional discharges, fines concerning the other offenses such as false statements are subject to the discretion of the Club Board. If MARPOL regulations are breached by a crew member but the Club member is not aware of that, it is likely that the Club Board will decide to reimburse the owner for fines imposed on him. However, the owner should satisfy the board that he took reasonable steps to avoid the conditions which led to the fines.²⁶¹

²⁵⁷ *Supra* note 20 at p 213

²⁵⁸ *Supra* note 194 at p 737

²⁵⁹ *Ibid*

²⁶⁰ *Ibid*

²⁶¹ *Ibid*

In cases where a pollution incident results in the confiscation of the ship, the Clubs usually do not indemnify the owner since such cover is excluded from the Club cover rules. However, there are some exceptional cases where the Clubs provide cover for loss of a ship due to confiscation by a legal authority. Such cover includes only the cases related to confiscation of an entered ship by reason of infringement of customs regulations. If it is occurred due to other reasons, the owner may be reimbursed up to the decision of the Club Board and the “Omnibus Rules”.²⁶²

²⁶²*Supra* note 194 at p 738, “Under the so called Omnibus Rule, many Clubs provide discretionary cover for expenses incidental to the operation of ships. These are liabilities, costs and exwhich are not otherwise covered under the Club rules but which are incidental to the business of owning, operating or managing ships and which in the opinion of the director of the Club fall within the scope of the association.”

5 Conclusion

As stated earlier, the slow process of development of the international statutory legislation regarding liability and compensation for oil pollution damage before the twentieth century resulted in inadequacy of the regime for the purpose of compensation to victims. Such matter continued until the *Torrey Canyon* disaster which convinced international legislators to find a satisfactory solution to the existing problems regarding the marine environment. Eventually, their efforts led to the birth of a revolutionary convention called the Civil Liability Convention. Later on, Fund Convention and Bunkers Convention were created to complete the compensation regime for ship-source oil pollution.

Although there are some uncertainties in provisions of the considered conventions, analysing of their main features leads to the following conclusions.

The CLC applies to pollution damage caused in the territory, including of the territorial sea, the exclusive economic zone of a contracting state or an area equivalent to it determined by that state in accordance with international law. Such pollution damage as defined by the Convention is recognized when loss or damage, including the cost of preventive measures, is caused by contamination resulting from escape or discharge of oil. However, the Convention excludes compensation for the damage to the environment *per se* and left it for the consideration of other international instruments. Apart from the geographical scope of application, CLC applies to spills from laden tankers as well as to spills from un-laden tankers which have residues of oil cargo on board.

It has been indicated that the most revolutionary feature of the CLC is the imposition of a strict liability on the shipowner although it derives from the traditional remedy of the tort of nuisance in English law. The strict liability provided by the CLC is designed in order to avoid the problems caused by fault based liability regime to claimants, such as proving the fault of the

shipowner which is impossible in many cases. Thus, the owner of a ship is liable under the CLC for any pollution damage which escapes from his vessel as a result of an incident without taking account of his nationality, residence or the state in which the vessel is registered. In addition, the strict liability under the Convention is channeled to the shipowner. However there are some limited exceptions which might release the shipowner from the liability. It should be pointed out that although the strict liability regime seems more favorable to claimants at the first glance, the possibility of the shipowner to limit his to the fixed amount provided by the CLC would balance the rights of both parties.

In order to complete the compensation regime, the CLC imposes compulsory insurance on the shipowners to cover the extensive liabilities with reference to other marine liability regimes. The required security shall be provided by a certificate affirming the adequate insurance or other security is in force.

The Fund Convention constitutes the second part of the two-tier system provided by the CLC by providing larger amount of compensation for oil pollution damage in excess of shipowner's liability under the CLC. Thus, the IOPC Fund is established by the Fund Convention to compensate for oil pollution when full compensation cannot be received from the shipowner. However, there are some situations under which the Fund is exonerated from the liability under the Fund Convention. Subsequently, the claimant is not entitled to any compensation from either the CLC or the Fund Convention.

The Fund Convention is in a close relationship with the CLC, and many of its provisions are modeled on the CLC provisions such as those related to scope of application. In addition, the Fund has the right that the person so compensated may enjoy under the 1992 CLC by subrogation against the shipowner and his guarantor. Such right prevents undue delay in the settlement of claims for compensation and the problems which might happen in practice. The Fund Convention also provides for rights of

recovery by subrogation against third parties and the right of subrogation against the Fund for the third parties who have paid compensation.

In addition, the Fund is also entitled to limit its liability. Hence, claimants can receive compensation to a certain amount and any further damage is not payable under the Fund Convention. The establishment of the Supplementary Fund might provide an important tool as it increases the limits of liability. However, it is not compulsory for the Fund's member states to become a party to it and it is left to the states whether they prefer to support the interest of the shipowners or the victims of pollution damage.

The loophole in the conventional regime of vessel-source pollution has been plugged by the Bunkers Convention. It has the same scope of application of the CLC and follows the patterns of it in many aspects. Scope of application of the Bunkers Convention includes the measures taken to prevent or minimize the damage determined by the Convention regardless of the place in which they are taken.

It seems reasonable that the Bunkers Convention excludes the pollution damage as defined in the CLC, as Bunkers Convention is designed to cover the damage which falls outside the CLC. However, the last part of the Article 4.1 by wording of "whether or not compensation is payable in respect of it under that Convention" might exclude from its scope of application the damage which is not payable under the CLC 92 in some cases, and this would be in contradiction with the objective of the Convention.

It has been discussed that the scope of liability of the Bunkers Convention differs from the CLC due to the single-tier regime of the Bunkers Convention. Accordingly, the shipowner is liable for pollution damage resulted from any bunker oil on board or originating from the ship. It has been also considered that the definition of the "ship" under the Bunkers Convention differs from what is provided by the CLC, and the "shipowner" embraces a wider range of persons including the registered owner, bareboat charterer, manager and operator of the ship. Furthermore, the Funds

Convention does not provide channeling liability provisions, and it is left to the states whether or not to include channeling provisions in their national jurisdictions.

The Bunkers Convention does not have an independent regime for limitation of liability such as the one provided by the CLC. By contrast, it refers the issue to other applicable national or international legislation which has brought some uncertainties this respect. The linkage of the limitation of liability to other regimes has become the reason for which there are differences in provisions related to compulsory insurance under the Bunkers Conventions comparing with those in the CLC.

The insurance industry and in particular P&I Clubs have a significant role in respect of compensation regime for oil pollution damage under the international conventions. P&I Clubs have almost similar rules relating to coverage for oil pollution liability.

In respect of damages, P&I Clubs indemnify the shipowners in respect of compensation payable by them resulting from pollution incidents. The Clubs however cover only the liabilities incurred by their members for being the registered owner of a ship not a cargo owner. For the purpose of reimbursement for preventive measures and clean-up expenses, the Clubs normally include an express rule which provides coverage for such expenses. In addition, the standard P&I Clubs cover any expenses by the shipowners as a result of complying with official orders or directions given by government or authorities of the coastal state affected by the casualty in order to prevent the pollution. Moreover, there are normally expressed rules in respect of coverage for damage and contamination incurred to private parties such as fishermen, hoteliers. The Clubs are also required to reimburse the “safety net” payment to salvors. Finally, most P&I Clubs provide cover for specific type of fines which might be imposed on their members for breach of pollution regulations.

5.1 Final Remarks

It has been suggested that there are some deficiencies in the international compensation regime established by the CLC, the Fund Convention and the Bunkers Convention, and occasionally the Conventions might lack clarity. However, IMO delegates, the international community and international legislators in general have expended a lot of efforts trying to eliminate the uncertainties which exist in some of the provisions. Indeed, it is not unfair to say that they have been rather successful in achieving a comprehensive scheme for the liability and compensation regime for oil pollution damage which covers a large number of claims.

By reference to the status of conventions provided by IMO in May 2011, the conventions constituting the international liability and compensation regime for ship-source oil pollution damage were adopted by a considerable number of states from the date of their entry into force. In the case of the CLC Protocol of 1992, 123 states representing 96.7% of the world's tonnage are parties to the Convention. Not surprisingly, 105 states representing 94.5% of the world's tonnage have ratified the Fund Protocol 1992. It is interesting that the Bunkers Convention has 58 contracting states representing 88.06% of world's tonnage although only less than 3 years have passed from the date of its entry into force.²⁶³ Receiving such an enthusiastic welcome from states per se indicates that these conventions constitute a successful international regime. The number of states which are parties to these conventions is expected to be increasing, and the writer believes that the United States should be encouraged to participate in this regime since it would play an important role in improving the system.

Furthermore, the fact that conventions such as the Fund Convention, the Bunkers Convention and the HNS which have been created after the CLC are largely modelled on the latter Convention in many respects, is additional proof that this regime has functioned well. In this respect, not only the

²⁶³<http://www.imo.org/About/Conventions/StatusOfConventions/Pages/Default.aspx>, available on 09/05/2011

concepts of strict liability, compulsory insurance and direct action against insurers have been inserted in the conventions which have emerged following the CLC, but also there has been a distinctive trend towards increase of the shipowner's liability for oil pollution damage to ensure that adequate compensation payable to victims is available.

Obviously, this regime could have not reached such a level of success without the cooperation of the insurers and P&I Clubs in particular. The large number of claims which have been settled by P&I Clubs in recent years indicates that they play a major role in this regime.

In this thesis, an attempt has been made to identify the deficiencies of the current compensation regime for oil pollution. The writer hopes that the uncertainties in some of the provisions which have been highlighted in the thesis will be clarified by the efforts of international legislators in the near future.

Bibliography

Books

Abecassis, David W. *Oil Pollution from ships: International, United Kingdom and United States*, 2nd edition

Basedow, Jürgen & Magnus, Ulrich (eds.), *Pollution of the Sea – Prevention and Compensation*, Berlin, Heidelberg: Springer-Verlag, 2007

Baughen, Simon: *Shipping Law*, Routledge Cavendish, 2009

Birnie P.W., Boyle, A.E. Redgwell C., *International Law and the environment*, Oxford University Press, 2009

Brans, Edward H.P., *Liability for damage to public natural resources*, Kluwer Law International, 2001

Brice, Geoffrey, *Salvage and The Role of Insurer*, *Lloyd maritime and Commercial Law Quarterly*, Feb 2000

Churchil, R.R, Lowe, A.V, *The Law Of the Sea*, Manchester University Press, 1999

Cousy, Herman, Droshout, Dimitri, *Unification of Tort Law: Fault*, P.Widmer Ed., Kluwer Law International

De La Rue, Charls, Anderson C.B, *Shipping and the Environment: Law and Practice*, LLP, 1998

De La Rue, Charls, Anderson C.B, *Shipping and the Environment: Law and Practice*, LLP, 2009

Elliott, Catherine, Quinn, Frances, *Tort Law*, 7th edition, Elliot & Quinn Series

Falkanger, T., Bull, H.G, Brautaset, L., *Scandinavian Maritime Law: The Norwegian Perspective*, Universitetsforlaget AS, 2004

Faure, Michael G., Lixin, Han & Hongjun, shan, *Maritime Pollution Liability and Policy: China, Europe and the US*, Kluwer, 2010

Gauci, Gotthard, *Oil Pollution at sea: Civil Liability and Compensation*, Wiley, 1997

Griggs, Patrick, Williams, Richard & Farr, Jeremy, *Limitation of Liability for Maritime Claims*, 4th ed., London: LLP, 2005

Gutierrez, Norman A. Martinez, *Limitation of Liability in International Maritime Conventions: The Relationship between global limitation conventions and particular liability regimes*, Routledge

Hazelwood, Steven J., *P&I Clubs: Law and Practice*, LLP, 2000

Institute of Maritime Law, *Southampton on Shipping Law*, Informa, 2008

Khee-Jin Tan, Alan, *Vessel Source Marine Pollution: The Law and Politics of International Regulation*, CSICL, 2006

Maes, Frank, *Marine Resource Damage Assessment: Liability and Compensation for Environmental Damage*, Springer

Ozcayir, Z. Oya, *Liability for Oil Pollution and Collisions*, LLP, 1998

Rogers, W.V.H., *Windfield and Jolowicz on Tort*, 4th Edition

Articles

De La Rue, Colin M., *Liability for Damage to the Marine Environment*, 1993

Griggs, P., *A Busy Schedule for International Maritime Law*, 4(1) S. & T.L.I. (2003) 29

Jacobsson, Måns, *Bunkers Convention in Force*, 15 JIML, 2009

Jacobsson, Måns, *The International Liability and Compensation Regime for Oil Pollution from Ships - International Solutions for a Global Problem*, 32(1) Tul. Mar. L. J., 2007-2008

Tsimplis, Michael, *Marine pollution from shipping activities*, 2008, 14 JIML

Wu, Chao, *Liability and Compensation for Bunker Pollution*, 33 J. Mar. L. & Com., 2002

Zhu, Ling, *Compulsory Insurance and Compensation for Bunker Oil Pollution Damage*, Berlin, Heidelberg: Springer-Verlag, 2007

Conventions and Documents

International Convention on Civil Liability for Oil Pollution Damage (CLC), 1969

International Convention on Civil Liability for Oil Pollution Damage (CLC), 1992

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1978

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992

International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunkers)

Convention on Limitation of Liability for Maritime Claims (LLMC)

International Convention on Salvage, 1989

Resolution No.4 of the 1992 Fund Assembly, annex IV to the record of decisions of its 1st session, 92FUND/A.1/34

IMO document LEG 77/11 para 126.

Online Sources

<http://www.iopcfund.org/erika.htm> (01/02/2011)

<http://www.iopcfund.org/prestige.htm> (01/02/2011)

[http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-on-Civil-Liability-for-Bunker-Oil-Pollution-Damage-\(BUNKER\).aspx](http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-on-Civil-Liability-for-Bunker-Oil-Pollution-Damage-(BUNKER).aspx) (01/02/2011)

http://news.bbc.co.uk/onthisday/hi/dates/stories/march/18/newsid_4242000/4242709.stm (08/02/2011)

<http://dictionary.babylon.com/ore-bulk-oil%20carrier/> (05/03/2011)

<http://www.iopcfund.org/> (18/3/2011)

[http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-on-the-Establishment-of-an-International-Fund-for-Compensation-for-Oil-Pollution-Damage-\(FUND\).aspx](http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-on-the-Establishment-of-an-International-Fund-for-Compensation-for-Oil-Pollution-Damage-(FUND).aspx) (18/3/2011)

<http://www.imo.org/About/Conventions/StatusOfConventions/Pages/Default.aspx>, (09/05/2011)

<http://www.iopcfund.org/erika.htm> (01/02/2011)

<http://www.iopcfund.org/prestige.htm> (01/02/2011)

[http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-on-Civil-Liability-for-Bunker-Oil-Pollution-Damage-\(BUNKER\).aspx](http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-on-Civil-Liability-for-Bunker-Oil-Pollution-Damage-(BUNKER).aspx) (01/02/2011)

http://news.bbc.co.uk/onthisday/hi/dates/stories/march/18/newsid_4242000/4242709.stm (08/02/2011)

<http://dictionary.babylon.com/ore-bulk-oil%20carrier/> (05/03/2011)

<http://www.iopcfund.org/> (18/3/2011)

[http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-on-the-Establishment-of-an-International-Fund-for-Compensation-for-Oil-Pollution-Damage-\(FUND\).aspx](http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-on-the-Establishment-of-an-International-Fund-for-Compensation-for-Oil-Pollution-Damage-(FUND).aspx) (18/3/2011)

<http://www.imo.org/About/Conventions/StatusOfConventions/Pages/Default.aspx>, (09/05/2011)

Table of Cases

Southport Corporation v. Esso Petroleum. [1955] 2 Lloyd's Rep. 655;
[1956] A.C 218 (HL)

The Wagon Mound [1961] Lloyd's Rep. 1 (P.C)

The Wladyslaw Lokietek [1978] 2 Lloyd's Rep.