UNIVERSITY OF ESSEX **DISSERTATION**

SCHOOL OF LAW

LLM/MA IN: LLM in International Commercial and Business Law
STUDENT'S NAME: Margarita Stavrou
SUPERVISORS'S NAME: Dr. Anna Marie Antoniou
DISSERTATION TITLE Are International Convention on Civil liability for Oil Pollution Damage (CLC) and International Convention on the Establishment of an international fund for compensation for oil pollution damage (FUND) adequate when it comes to protecting the maritime environment from oil pollution?

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2018-2019

Supervisor: Dr. Anna Marie Antoniou

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Registration Number (optional): **1805748**
Number of Words: 15,075 WORDS
Date Submitted: 10/09/2019

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Introduction:

Every human being can think and understand that marine pollution is a global problem is several ways. Although, marine pollution can be considered not only as a global problem but a many-sided complex phenomenon with interlocking economic, political, technological and most importantly legal aspects.[1] Consequently it is obvious that since it is a global problem it cannot be resolved with just a single remedy or solution. Since recently, and maybe up to nowadays, the human being have in mind that since oceans are so vast and deep it does not matter how much trash and chemicals they dumped into the oceans because the effects would be negligible.[2]

Until today, the whole world had already witness dramatic oil spills which resulted considerable, substantial and sizable consequences.[3] The pollution of the oil can occur with an oil spill which has a huge possibility to happen since around half of the global crude oil production is carried by sea.[4] Besides, vessel-source pollution has been said to be "the most obvious and widely publicized source of marine pollution.[5] Over recent decades, large oil pollution incidents have reduced both in number and in size. Although the problem of oil spills has not been resolved since there is still the potential threat of environmental damage and economic loss associated

[1] Oscar Schachter and Daniel Serwer, "*The American Journal of International Law*", Vol. 65, No. 1 (1971) 84
[2] 'Marine Pollution, Explained' (*Nationalgeographic.com*, 2019) <https://www.nationalgeographic.com/environment/oceans/critical-issues-marine-pollution/> accessed 10 September 2019.
[3] Tumaini S. Gurumo, Lixin Han, "*The role and Challenge of International Oil Pollution Liability Legislations in the Protection of Marine Environment*", Vol.3, No.2, (2012) 183
[4] United Nations, "*Liability and compensation for ship-source oil pollution*" – An overview of the international legal framework for oil pollution damage from tankers, (United Nations Conference on trade and development) No.1, (2012), 1
[5] Gotthard M. Gauci, "*Protection of the Marine Environment through the International Ship-source oil pollution Compensation Regimes*", Vol.8 Issue 1, (1999), 29

with the carriage of oil.[6] At the same time, significant quantities of heavy bunker fuel are carried across the oceans since there is a growing in the size and the carrying capacity of ships transporting cargo of any type.[7]

Vessel – Sourced Marine Pollution:

The wide term of the vessel- sourced marine pollution includes accidental spills and intentional discharges by sea – going vessels and it is the marine pollution of the environment which is mostly described in UNCLOS.[8] The pollution of the marine environment can be described as the introduction by man either directly or indirectly of substances or energy into the marine environment and, has as a result, deleterious effects to marine life and many other catastrophic actions.[9]

On the other hand, MARPOL also defines vessel – sourced pollution incidents as "an event involving the actual or probable discharge into the sea of a harmful substance, or effluents containing such substances.[10] Additionally, this term extends to pollution whenever it may occur with the effect on the marine environment of whichever section of seas and oceans.[11]

It is believed that accidental pollution by oil, when carried as cargo, is the most common pollutant originating from ships. This can be illustrated by the International Tanker Owners Pollution Federation Limited (ITOPF), which states that the number of oil spills caused by tankers has decreased dramatically since the 1970s when the annual average of spills was 25.2 in comparison to 3.8 spills average.[12] Notwithstanding the fact that there is a decrease in the number of incidents, however, their severity remains alarming when considering the quantities of oil spilled. This can be clarified again with the ITOPF which in 2006 states that "only in the past 15 years some 861,000 tons of oil carried as cargo was spilled into the ocean as a result of tanker

[6] United Nations, "*Liability and compensation for ship-source oil pollutio*n" – An overview of the international legal framework for oil pollution damage from tankers, (United Nations Conference on trade and development) No.1, (2012), 1
[7] IBID
[8] UNCLOS 1982
[9] Ivana Zovko, "*Effectiveness of international instruments of liability and compensation for vessel-sourced pollution: case study of southern ocean*", (2005) 1146
[10] MARPOL 1973 ILM 1319
[11] MARPOL 1973, Art. 2(6)
[12] 'Statistics - ITOPF' (*Itopf.org*, 2019) <https://www.itopf.org/knowledge-resources/data-statistics/statistics/> accessed 4 September 2019.

incidents".[13] From the above statement, it can be seen the huge amount of oil which was spilled in the sea and it is obvious to hove many damages occurred.

In addition, when pollution damage occurs, the first thing that someone will look at is the oil spill response, most probably, a state's right of intervention and the compensation regimes.[14] The international compensation regimes are found firstly, in the 1969 International Convention on Civil Liability for Oil Pollution Damage (CLC 1969), secondly the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND Convention 1971) and lastly, the protocols of these two conventions.[15]

This particular final thesis attempts to analyze the three main conventions regarding marine pollution oil spills in order to adequate when it comes if they protect it. The approach in order to prove this, will "comparative" which means that there will be an analysis of how different legal systems and jurisdictions have considered and addressed the problem of oil spills regarding marine pollution. In addition, this paper will include issues, based on major past incidents and proposals which attempt to solve the problems which occur when an oil spill incident occurs in the sea. Before the main chapters, it will be a background generally of all the international laws relating to marine pollution in order to prove why this dissertation only focuses in the three main conventions, CLC, Fund Convention and the International Oil Pollution Compensation Funds (IOPC). Afterwards, there will be 3 chapters; each of one explains each main convention separately in order to show how the law reacts in an oil spills incident. Moreover chapter four, will try to prove by 2 or 3 major incident if the international react in a proper way or if the law is still weak and with gaps. Lastly, before the conclusion it will be a chapter of possible changes which may help for improvements.

Background:

The term pollution in general can be defined as "the introduction of harmful contaminants that are outside the norm for a given ecosystem".[16] Although the term of pollution includes many types of pollution which reach the ocean: pesticides, herbicides, chemical fertilizers, detergents, oil, plastic and, many other solids. More specifically, according to Article 1(6) of the Civil Liability

[13] IBID
[14] Gotthard M. Gauci, no. 5, 29
[15] IBID
[16] Oscar Schachter and Daniel Serwer, no.1, 85

Convention[17] pollution damage can be defined as "loss or damage caused outside the ship by contamination resulting from the escape or discharged of oil from the ship, wherever such escape or discharge may occur".[18] Moreover, pollution is spread via water and air as well as through direct dumping.[19] Since this research paper focuses on oil spills, it is too important for someone to understand how important is for the oil spill incidents to be avoided.

The relationship of oil pollution and marine environment:

Starting with the transportation of oil, which was mostly used as a source of energy as well as fuel, was through tankers, some specialized vessels for carrying oil.[20] The first problem appeared when in the 1960s oil pollution from ships was becoming more of a threat as the amount of oil being transported by sea was increasing as were the number and size of tankers.[21] The fact that oil pollution was first recognized at sea during the World War I but the first international convention regarding the prevention of oil pollution at sea was adopted after World War II, means that from the early stages of oil pollution people were not giving the necessary importance on this topic.

Examples of Oil Spills:

First of all, it should be noted that since past years, major oil spills could attract the attention of the public and the media regarding the global awareness of the risks of oil spills and the damage they do to the environment.[22] This can be illustrated by an incident which occurred in 1967 named Torrey Canyon, which was one of the first large supertankers and it was also the source of one of the first larger oil spills.[23] In addition, it should be noted that oil tanker vessel accidents are one of the most dangerous sources of oil pollution in relation to the marine environment.

Additionally, in another one crucial oil spill called "Erika", the tanker broke in two and sank on December 1999 in the French exclusive economic zone. As a result in the following days,

[17] 1992 Civil Liability Convention, Art. 1(6)

[18] Aleka Mandaraka-Sheppard, "*Modern Maritime Law (Volume 2): Managing Risks and Liabilities*", (3rd edn, 2013, Routledge), 837

[19] Farhan M. Al. Fartoosi, "*The impact of maritime pollution in the marine environment: case study of maritime oil pollution in the navigational channel of Shatt Al-Arab*", (2013), 2

[20] Tumaini S. Gurumo, Lixin Han, no. 3, 183

[21] IBID

[22] Merv Fingas, "Marine Oil Spills", (2018)

[23] IBID

significant pollution damage occurs along with the French coastline.[24] The significant consequence about this disaster was the passage of the Oil Pollution Act of 1990 (OPA) in the US, which includes regulations on how damages to natural resources were to be assessed in order to restore the environment.[25] In addition there were regulations about compensation to the public for the injury or loss of natural resources and services as a result of the spill and the consequent response actions.[26]

Another disaster which happened in 2002 was the Prestige oil tanker disaster in Spain where four thousand tonnes of fuel leaked from the tanker and more than 200 kilometers of northern Spain have been impacted by the oil.[27] The spill is the largest environmental disaster of both Spain's history and Portugal's history by polluting thousands of kilometers of coastline and more than one thousand beaches on the Spanish, French and Portuguese coast.[28] Both the Erika catastrophic proportion and the Prestige disaster have highlighted the ineffectiveness of the present approach in combating vessel-sourced pollution.[29]

A more recent example of an oil spill is the Deepwater Horizon Oil Spill which happened in 2010 in the Gulf of Mexico which flowed unabated for three months in 2010. The oil spill caused by an explosion killed 11 men who were working on the platform and 17 were injured but also extensive damage to marine and wildlife habitats.[30]

The law generally on Marine Pollution:

In order to focus on the conventions regarding oil spills, firstly it has to be mentioned generally the law on Marine Pollution in order to understand how important is the prevention of a type of marine pollution, the oil spills. In the following section the three main international conventions,

[24] Baris Soyer & Andrew Tettenborn, "*Pollution at Sea, Chapter 7: Avoiding international legal regimes: The Erika Experience"*, (1st edn, 2012)
[25] Oil Pollution Act 1990
[26] Merv Fingas, "*Oil Spills and Response*" (2016), 184
[27] (*Assets.wwf.org.uk*, 2019) <http://assets.wwf.org.uk/downloads/prestige.pdf> accessed 3 September 2019.
[28] 'BBC NEWS | Monitoring | Media Reports | Press Condemns Tanker Disaster' (*News.bbc.co.uk*, 2019) <http://news.bbc.co.uk/2/hi/not_in_website/syndication/monitoring/media_reports/2496101.stm> accessed 4 September 2019.
[29] Ivana Zovko, "*Effectiveness of international instruments of liability and compensation for vessel-sourced pollution: case study of southern ocean*", (2005) 1144
[30] Obozuwa Enike Dominic, "*Legal Consequences of major oil spills*", (2012), 17

UNCLOS, MARPOL, SOLAS, will be analyzed in order to show how important is for marine pollution to be prevented.

UNCLOS: (United Nations Convention on the Law of the Sea 1982)

Starting with, the part of UNCLOS which is important to focus on is Part XII since it deals with the protection and preservation of the marine environment.[31] According to article 235, "states are responsible for the fulfillment of their international obligations concerning the protection and preservation of the marine environment, and are liable in accordance with international law".[32] This means that all the states are required to ensure that recourse is available for prompt and adequate compensation under their jurisdictions. Moreover article 192 comes up with the obligation to protect and preserve the maritime environment.[33] In relation to this, article 211(1),(2), provides that states have to establish and keep under review international rules and standards to prevent, reduce and control pollution of the marine environment from vessels.[34] In addition, States shall promote the adoption of routing systems designed to minimize the threat of accident that might cause pollution of the marine environment.[35]

MARPOL: International Convention for the prevention of Pollution from Ships (1973, 1978)

Starting with, MARPOL is responsible for all forms of pollution from ships apart from dumping.[36] In addition MARPOL includes detailed standards which are covering oil. Noxious liquid, substances in bulk and other harmful substances carried by sea in packaged form.[37] Lastly, MARPOL can be considered as a significant convention because it empowers and obliges every state party to "prohibit" any violation of its requirements.[38] This means that each state party of MARPOL is required to establish sanctions under its laws for such violations.

[31] UNCLOS, Part XII
[32] UNCLOS, Art. 235
[33] UNCLOS, Art. 192
[34] UNCLOS, Art. 211(1), (2)
[35] Aleka Mandaraka-Sheppard, no. 18, 823
[36] MARPOL 1973, 1978
[37] Aleka Mandaraka-Sheppard, no.18, 824
[38] IBID

SOLAS: (International Convention for the Safety of Life at Sea 1974, 1978)

First of all, SOLAS contain a detailed provision which covers oil tankers and include mandatory provisions for ships carrying dangerous cargoes in bulk.[39] The most important chapter of this convention is chapter IX since it makes mandatory the application of the ISM Code (International Safety Management) which requires SMSs to be run on those ships to which the ISM codes applies.[40]

Role and Challenge of International Oil Pollution:

From the past, oil pollution liability and compensation is among important technical and legal areas of the discussion by scholars. In general, the Civil Liability Conventions (CLC) regime is the regime which regulates issues of liability and compensation for oil pollution damage.[41] The question which arises is whether the CLC regime contributes to the protection of the marine environment. There is a percentage of people who believe that the importance of oil to development cannot be overemphasized but on the other hand, the danger and effect of oil pollution to the marine environment cannot be ignored because as seen by the major incidents the damages and the pollution are huge. Nonetheless, there are discussions on the protection of marine environment through the role of the conventions and some challenges which arise from the provisions of the convention and its application.

International Legal Regime Governing Marine Oil Pollution Liability:

Narrowing down from Marine pollution to marine oil pollution, the first international convention for the prevention of Pollution of the sea by oil (OILPOL) was the first international convention which was exclusively designed to deal with ship source oil pollution.[42] Despite the existence of several

[39] IBID
[40] SOLAS, Chapter IX
[41] Tumaini S. Gurumo, Lixin Han, "*The role and Challenge of International Oil Pollution Liability Legislations in the Protection of Marine Environment*", Vol.3, No.2, (2012) 183
[42] OILPOL 1954

international conventions that address pollution prevention, pollution incidents may nevertheless happen and as a result, it is necessary to have a mechanism to compensate pollution victims.[43]

As mentioned before, only after the Torrey Canyon disaster the world noticed the need of for a specific convention which will address the issues which may arise and concerning the liability and compensation for pollution caused by oil spills.[44] Additionally, under the IMO, there have been adopted some conventions addressing civil liability for oil pollution damage. The conventions that have formed the current international legal regime for oil pollution liability and compensation and are related to this particular thesis, are as follow: (a) International Convention on Civil Liability for Oil Pollution damage 1969 (CLC)[45], (b) International Maritime Organization Protocol 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage 1969 (CLC 1992),[46] (c) International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 (Fund 1971),[47] (d) International Maritime Organization Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage of 1971 (Fund 1992)[48], (e) Protocol of 2003 to amend the International Convention on the Establishment of an International Fund Compensation for Oil Pollution Damage 1992 (Supplementary Fund Convention 2003).[49]

As mentioned in the previous sections, the aforementioned conventions ensure that victims of oil pollution incidents are adequately compensated for their losses and have been developed and improved upon primarily in the aftermath of some, particularly large oil spills. Although the purpose of this paper, is whether this point of view is correct according to the CLC Convention and Fund Convention having in mind that the CLC and the Fund Convention was the first dedicated international conventions to deal with the issue of ship-source oil pollution. Accordingly, the relevant regulatory framework for liability and compensations have over the past fifty years been further developed and refined after some large oil spills.[50] Although, the number of large tanker oil spills has

[43] W. Hui, "*Prevention and Compensation for Marine Pollution"*(2010) 45 (BOOK)
[44] T.Mensah, "*A revolution in Maritime Law: a history of the original legal framework on oil spill liability and compensation*" (2003) 46
[45] CLC 1969
[46] CLC 1992
[47] Fund 1971
[48] Fund 1992
[49] Supplementary Fund Convention 2003
[50] 'IOPC FUNDS | Incident Map' (*Iopcfunds.org*, 2019) <https://iopcfunds.org/incidents/incident-map> accessed 4 September 2019.

significantly fallen over the years but ate the same time the implications of any oil spill may be devastating or any affected economies.[51] Since the trade in oil is set to intensify in response to increasing demand and with growing world oil trade and with the expectation to continue to rise, ship source oil pollution will always remain as a potentially important risk.

CLC AND Fund Convention – The old regime

Starting with the CLC, it is an important convention since it was the first liability convention on oil pollution by persistent hydrocarbons. CLC was found in 1969 but entered into force in 1975 by establishing a first tier system of compensation for oil spills from ships that carry oil as cargo.[52] The convention limits itself to pollution from ships carrying oil in bulk as cargo, thus the liability is channeled to the ship-owner, which indicates a basis of liability which is strict. In relation to this, under section 153(1), strict liability is imposed on all ship-owners, irrespective of their nationality or flat, in respect of discharges or escapes of persistent oil from laden bulk oil tankers.[53] In other words, this means that there is no need to prove fault or negligence by the victims but also provides for compulsory insurance on the part of the ship-owner in order to ensure available compensation.[54]

In 1971 another diplomatic conference was convened which had, as a result, the adoption of a "sister convention", the 1971 Fund Convention, but came into force in 1978.[55] This particular convention provides the second tier of compensation in respect of damage in excess of the liability which is available under the 1969 CLC, but once again, subject to an overall monetary cap per incident.

Both of the conventions were widely accepted at the international level since 110 states ratified the 1969 CLC and 79 states ratified the 1971 Fund Convention. Although, they were later revised and amended which results to the adoption of the second set of conventions which substantially increased the amount of compensation available to oil pollution victims.

Second Attempt:

In 1992, there was a second attempt in order for the CLC and Fund Convention Protocols to be created, known as the 1992 Civil Liability Convention and the 1992 Fund Convention.[56] The

[51] United Nations, no. 4 , 7
[52] United Nations, no.4, 9
[53] Merchant Shipping Act 1995, s.153(1)
[54] Tumaini S. urumo and Lixin Han, no. 3, 184
[55] Aleka Mandaraka-Sheppard, no. 18, 829
[56] IBID

difference between the 1969 and 1971 with the 1992 conventions was that the new conventions were built upon their predecessors, with the maintenance of the system of tiered liability and compensation but with the limited liability of a ship-owner. Everything was depending on the ships tonnage and the additional compensation which was available from an International Pollution Compensation Fund (The 1992 IOPC Fund), with a restriction on the maximum amount per incident.[57] Moreover, those two Conventions introduce some significant changes to the previous regime, like for example widening the relevant geographical scope of application and by increasing the maximum amounts of compensation available of each Convention.[58]

Furthermore, after the incident of Erika in 1999, the need for the increase of the compensation amount became necessary and in 2000 by way of tacit amendment procedure, the compensation levels were raised by 50%.[59] Along with, the Protocol of the 1992 Fund Convention – the supplementary Fund Protocol – was adopted in 2003.[60] Although, the 1969 and the 1992 CLC were co-existing at the international level because many of the original Contracting States to the 1969 CLC have since adopted the 1992 CLC and denounced the earlier convention, but some of them did not do so.[61] On the other hand, the 1971 Fund Convention does not apply to any incidents occurring after the 24 of May 2002 because it was intended to work in tandem with the 1969 CLC. This means that the 1971 IOPC Fund that had been established under the 1971 Fund Convention will be wound up as soon as it has paid compensation to those victims of pollution damage but only from incidents which occurred after the application of the 1971 Fund Convention.

The Role of the Supplementary Fund Protocol 2003:

Starting with, the 1992 CLC which supplements the 1992 Fund Convention, has established a regime for compensating the victims when compensation under the CLC is not available or it is inadequate.[62] In other words, if an incident exceeds the maximum amount which is available under the 1992 CLC and 1992 Fund Convention, the Supplementary Fund Convention will the responsible one. In respect to this, the 2003 Supplementary Fund Protocol was adopted in order to introduce a third tier option of compensation for the Contracting states to the 1992 CLC and 1992 Fund

[57] IOPC Fund 1992
[58] United Nations, no. 4, 10
[59] United Nations, no.4, 11
[60] Supplementary Fund Protocol 2003
[61] United Nations, no. 4, 11
[62] Aleka Mandaraka-Sheppard, no. 18, 830

Convention.[63] At this point it has to be mentioned the fact that only contracting states to the 1992 Fund will be wound up as soon as it has paid compensation to those victims of pollution damage from incidents which happened when the 1971 Fund Convention was in force. The aforementioned had as a result that the oil pollution victims in the States which did not comply with the second tier of compensation and still adhere the 1969 CLC will no longer have benefits from the second tier which exceeds the limited liability of a ship-owner under the 1969 Convention. In order to see how big is the difference of compensation between the two tier options it has to be mentioned the amounts of compensation which are available in respect of an oil pollution incident. On the one hand under the 1969 CLC, always depending on the size of the ship, the compensation amount is up to 14 million SDR and if the oil pollution victim in a state which is contracting both of the 1992 CLC and 1992 Fund could benefit an overall amount of compensation of 203 million SDR.[64] On the other hand, the situation is less pronounced but similar where the Contracting states to the 1992 CLC have not yet joined the 1992 Fund Convention. In that situation the oil pollution victim will be benefited from an overall amount of compensation per incident, again always depending on the size of the ship, of maximum 89, 77 million SDR.[65]

Civil Liability Conventions of 1969 and 1992:

As aforementioned, both of the two conventions, 1969 and 1992 CLC, co-exist and they shay central features, although they have some differences in some respects. Starting with, both of the conventions govern the liability of ship-owners for oil pollution damage by providing the first tier of compensation.[66] It is important to understand the term "pollution damage" which is referred to "the loss or damage which is caused outside the ship by contamination resulting from the escape[67] or discharge of oil from the ship, whenever such escape may occur[68], along with impairment of the environment and the costs of preventive measures".[69] In addition, the main provisions of the 1969 and 1992 Civil Liability Conventions are mostly the same; however in term of geographical application is different. This difference exists because in the case of the 1969 CLC the geographical application is

[63] United Nations, no.4, 11
[64] IBID 12
[65] United Nations, no.4, 12
[66] IBID, 13
[67] Fund Convention 1992, Art. I(2)
[68] Supplementary Fund Protocol Art 2003, I(6)
[69] Oosterveen W., "*Some recent developments regarding liability for damage resulting from oil pollution – from the perspective of an EU Member*", (2004), 230

more narrow in scope in relation to 1992 convention and is only applicable to the pollution damage that is suffered in the territory or territorial sea of a contracting state.[70] On the one hand, the 1969 CLC does not cover the pollution damage in the exclusively economic zone or equivalent area of a contracting state to the 1969 CLC. Contrary to this, the 1992 CLC covers any pollution damage occurred in the territory, territorial sea and exclusive economic zone or equivalent area of a Contracting state since it provides a much more extensive coverage.[71]

Continuing to the definition of oil, according to article I(5), of the CLC 1992, "oil" is defined as 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 a ship.[72] However, the definition of "oil" it's a little bit different between the two conventions, although in both conventions is covered the pollution from persistent oil, for example, crude oil and fuel oil, rather than non-persistent oil, such as light diesel oil, gasoline or kerosene. In other words, the CLC 1992 wording does not define precisely which types of oil are persistent and as thus included within the scope of the Convention.[73] Nonetheless, it does not seem to produce a different result as the term is the same and must be interpreted by reference to the 1992 CLC.

In addition, the difficulty to define the scope of the 1992 CLC, to some extent, it has been resolved by the express reference to some types of oil within the oil definition and, to another extent, by the development of a definition of non-persistent oils by the IOPC Fund.[74] Non – persistent oil can be defined as the oil which: "at the time of shipment, consists of hydrocarbon fractions, (a) at least 50 per cent of which, by volume, distils at a temperature of 340ºC and (b) at least 95 per cent of which, by volume, distils at a temperature of 370ºC when tested by the ASTM MEHOD d86/778 or any subsequent revision thereof".[75]Additionally, this definition is more accurate from the one which is included in the 1992 CLC, while it presents difficulties because it cannot be applied to non-mineral oils since they cannot tolerate the distillation process.[76] As a result, all of the oils which do not fall within the non-persistent oil definition are persistent oils and accordingly subject to the CLC convention.

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[70] Yvonne Baatz, Ainhoa Campas Velasco, et al : "*Maritime Law*", (4th edn, 2018, Routledge), 387
[71] United Nations, no. 4, 14
[72] CLC 1992 Art. I(6)
[73] Yvonne Baatz, Ainhoa Campas Velasco, et al, no. 70, 387
[74] Caryn Anderson, "*The International Pollution Federation Limited (ITOPF) Persistent vs Non-Persistent Oils: What you need to know*", (2001)
[75] Yvonne Baatz, Ainhoa Campas Velasco at al, no. 70, 387
[76] IBID

Types of Vessel Covered:

First of all, a ship is defined as follows: “any sea-going vessel and any seaborne craft of any type whatsoever”.[77] The problem occurs since there is no definition of “Seagoing”, “vessel”, “seaborne” or “craft” in the Convention.[78] In addition, the restriction of 1992 CLC application to ships “constructed or adapted for the carriage of oil in bulk as cargo”, having, as a result, the emphasis to the requirements of approval of ships as physically suitable for the carriage of oil. The CLC always applies to ships which are only capable carrying oil in bulk. Moreover, according to article I(1) of the 1992 CLC, the application of the 1992 CLC will also depends on whether the structure under discussion is “carrying oil in bulk as cargo”.[79] Since most of the times the notion of carriage usually involves transportation rather than containment, it is strongly arguable that where the intention is to store rather than carriage, the 1992 CLC will not be applicable. While this interpretation is literally consistent with the wording of article I (1), it in practice means that pollution damages from such structures which are used for storage would require some further legislation to achieve the same coverage under the CLC.[80]

Moreover, in 2006 the Greek Supreme Court held in the “Slops”, a decommissioned tanker used for storage of oil was covered by the definition of ships.[81] After 10 years, in 2016, the IOPC Fund Assembly accepted a “Guidance Document for the Member States” which includes an illustrative list of craft falling within the definition of the ship and a list of craft which are falling outside the definition of the ship. Finally, the Member States have agreed to follow these lists but in the case where the craft is not falling clearly in either category, the concept of “maritime transport chain” has been agreed to be used as the interpretive tool in a case-by case approach,[82] in other words, in each case, it will be a different result.

Liability of the ship:

As mentioned before, the owner is strictly liable if the ship which causes pollution damage. Strict liability means that there is no need to prove fault of the ship-owner,[83] which means that the claimant needs only to prove that the pollution damage suffered, caused by a type of oil which is

[77] MSA, art.170
[78] *Michael* v *Musgrove* [2011] EWCH 1438
[79] CLC 1992, Art. (I)1
[80] Yvonne Baatz, Ainhoa Campas Velasco at al, no.70, 388
[81] IBID, 389
[82] Yvonne Baatz, Ainhoa Campas Velasco at al, no. 70, 389
[83] United Nations, no.4, 15

covered by the CLC convention which came from a ship covered by the CLC convention. For example, even if there is no negligence involved the owner will be liable irrespective of fault. In the case where the pollution damage results from the escape of oil from more than one ship and the damage is not reasonably separate, then the result is that both of the registered ship-owners will be held jointly and severally liable.[84]

In addition, a very limited number of exceptions to the ship-owner liability are set out in both of the Civil Liability Conventions. Under 1992 CLC the ship-owner will escape liability for the pollution damage if it is proven that "the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character, or was wholly caused by a third party's act or omission done with intent to cause damage".[85] Moreover, in order for the defense to be established, the ship – owner will have to demonstrate not only that he and his employees could not have avoided the phenomenon relied upon, but they have to prove also that the phenomenon relied upon what too strong to be resisted.[86] Another issue which could arise is whether the ship – owner has to prove that the exceptional natural phenomenon was unavoidable and difficult to be withstood by the vessel itself or would he have to go further and prove these matters in respect of any ship? Someone might think that the words qualifying "natural phenomenon" should be understood as meaning "beyond all human power to prevent".

An example which discusses the issue of "natural phenomenon" is the Nakhodka in 1997, where the ship – owner denied liability, on the grounds that the combined state of the natural conditions facing the ship at the time of its loss amounted to an exceptional natural phenomenon.[87] This case is important and interesting to analyze since it has raised issues including "whether the Art.III(2)(a) required a court to limit the defence only to exceptional phenomena that could be categorized within one single description, for example an earthquake or tsunami". On the other hand, it has raised the question whether a court could properly decide that combinations of phenomena fell within the defence, provided that they met the individual criteria which fall within Art. III(2)(a). Conclusively, the court held that the issue was not pursued and all the claims were settled out of the court. In another case, called "Volgneft 139", the "natural phenomenon" defence had been tested

[84] Baughen, "*Marine Pollution*", Chapter 17, 327
[85] CLC 1992, Art. III.2(a)
[86] Aleka Mandaraka-Sheppard, no. 18, 843
[87] 'JAPAN: Oil Spill From 'Aging' Russian Tanker Jolts Japan | Inter Press Service' (*Ipsnews.net*, 2019) <http://www.ipsnews.net/1997/02/japan-oil-spill-from-aging-russian-tanker-jolts-japan/> accessed 6 September 2019.

again, since it shows that the 1992 Fund interpreted the defence in terms of the effect of the phenomenon upon the region instead of focusing on the particular ship.[88] The main issue here was whether the storm was exceptional in order to exonerate the ship – owner from liability, and if so the 1992 Fund Convention would have to pay the entire compensation to all the victims of the oil spill. Finally, the Fund's experts concluded that the storm was not exceptional because there were records of similar storms being experienced in the region.

In addition, according to article III.2 of CLC 1992, the owner will not be liable where "the oil pollution damage was wholly caused by the negligence or other wrongful acts of any government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function". [89] In the case where there the ship-owner is negligent and contributes to the damage, then the exceptions will not apply[90] and this can be illustrated by the second and third exceptions where the requirement for their application is that the damage was "wholly caused" by the relevant exception. An example of the defence of government wrongful act is the "Nissos Amorgos" which happened in 1997 when the Bolivian Republic of Venezuela brought criminal proceedings for environmental damage against the ship – owner, his P&I club and the master of the ship.[91] Finally, they were held liable and they had to pay 60 million dollars to the government, although on the appeal of the case the judgment was upheld.[92] This happened because the defence by the ship – owner and his P &I club was that the government did not have an admissible claim since the pollution caused wholly by the wrongful act of the Venezuelan Government.

However, there are some situations where even if the ship was in a war area the ship-owner will be held liable and not able to escape liability, for example, if the ship-owner sails the ship negligently into an area of war and the damage will be considered to arise from the ship-owner's negligence.[93] As a result, the loss of a ship-owner's right to limit liability, under the 1992 CLC, will be in practice particularly rare!

[88] IOPC Fund Annual Report, 2008, 119-122
[89] CLC 1992, Art. III.2 and MSA 1995, s.155
[90] Yvonne Baatz, Ainhoa Campas Velasco at al, no.70, 392
[91] Aleka Mandaraka-Sheppard, no.70, 844
[92] IBID
[93] Aleka Mandaraka-Sheppard, no.70, 844

Insurance – Compulsory:

Firstly it has to be mentioned that the CLC provides financial security for the owner's liability for pollution damage in order for a direct right of action by third party claimants against the insurer or another person.[94] Correspondingly, this is a very strong point of CLC since CLC ensures that recovery may be available even if the owner is not financially capable of paying. In addition, all ships which carry in bulk cargo of more than 2,000 tons of persistent oil are required to supply a certificate confirming liability insurance covering their CLC liabilities.[95] Moreover, this mandatory insurance will ensure that claims against a ship-owner are not frustrated by insolvency, for example following loss of a vessel registered in a single – Ship Company. As a result of this mandatory insurance, claimants will be benefited from a rights of a direct action against the ship – owner's insurer in cases where the ship – owner is not financially capable in settling claims. Additionally, according to the 1992 CLC, for any pollution damage claim the ship – owner and its insurer will be the only persons a claimant may sue. The other person which will not be protected from the 1992 CLC can be sued directly thus potentially becoming exposed to an unlimited, fault – based, liability. Lastly, ships registered with a state which still applies the 1969 CLC or a state applies no version of the CLC at all, may apply to a 1992 CLC state to take a certificate in respect of the 1992 CLC in order to enable them to continue to trade to states parties to the 1992 CLC.

In cases of compulsory insurance they might arise issues when there are inconsistencies between the insurance policy and the certificate issued by the flag state. In the case of Alfa I, the insurance policy limits the liability by a warranty, where the insurance policy stated: "warranted non – persistent cargo only" and the certificate issued by the flag state – Greece – confirmed the insurance cover pursuant to the Convention. The 1992 fund is arguing whether the ship was allowed to trade on the basis of the representation made on the certificate and therefore the P & I club should be liable up to the CLC limit of compensation applicable to this Bessel, being less than 5,000 GT.[96] According to article VII (8) "claims for compensation under the 1992 CLC can be brought directly against the CLC insurer/guarantor".[97] However, the insurer or the guarantor, will most of the times be the one of the P&I clubs that insures the third-party liabilities of ship – owners.

[94] CLC 1992, Art. VII.8
[95] Baughen, "*Marine Pollution*", Chapter 17, 329
[96] Aleka Mandaraka-Sheppard, no.70, 845
[97] CLC 1992, Art. VII(8)

Moreover, the case of Redffren barge, which happened in Nigeria in 2009, can be seen as an example of problems posed for victims of pollution and for the Funds.[98] The owner of the ship was unknown and there was no P&I Club insurance since the barge was not registered. In this particular incident there were about 26 million dollars for claims and as a result, after 3 years of the incident, the Fund's executive committee agreed that the director should first establish whether the barge was a CLC ship and the precise location of the claimants, to assess the likely losses caused by the incidents. In a similar case, the issues of the victims of pollution damage can be seen in the JS Amazing case. There was an oil spill in 2009 which did not have P&I insurance but although the ship was carrying more than 2,000 tons of oil.[99]

Limitation of Liability:

As for the limitation of liability, firstly it has to be mentioned the under the 1992 CLC scheme limitations of liability can be argued as protection which is provided to the ship – owner in exchange for the imposition of strict liability. As a result, the limitation of liability under the 1992 CLC might be referred only in situations in which the liability is imposed under the 1992 CLC and only for damages which the 1992 CLC covers.[100] Moreover, the ship – owner under the 1992 CLC is able to limit his CLC liability to an amount determined by the tonnage of the ship.[101] A significant change between the 1969 and 1992 CLC is that the limit of the ship – owner's liability under the 1969 CLC is much lower than that under the 1992 CLC, 14 million SDR and 89,77 irrespectively. This change is significant because it offers greater protection to the claimant, but in order for the ship – owner to be benefited from limited liability, he must establish a limitation fund for the total sum representing the limit of his liability to be distributed among the claimants by the courts or competent authority of the Contracting state where the damage occurs.[102]

In some circumstances though, the ship – owner may lose his right to limit the liability. Under the 1992 CLC, only the acts or omission of the owner may remove the owner's right to limit liability. As mentioned before, the 1992 CLC is more restrictive than that in the 1969 Convention and this can be illustrated as follows. On the one hand, under the 1992 CLC, the shop – owner will only lose the right to limit his liability only if "it is proved that the pollution damage occurred from an "intentional act or

[98] Aleka Mandaraka-Sheppard, no.70, 845
[99] IOPC Funds Annual Report 2012
[100] Yvonne Baatz, Ainhoa Campas Velasco at al, no. 70, 393
[101] Aleka Mandaraka-Sheppard, no.70, 833
[102] United Nations, no.4, 15

omission", or where the ship - owner acted "recklessly with knowledge that such damage would probably result" and on the other hand, under 1969 CLC, the right will be lost "where the claimant proves that the incident occurred as a result of the "actual fault or privity".[103] A significant point is that ships which are registered with a state that still applies the 1969 CLC will also be issued with certificates in respect of the 1992 CLC in order from them to continue trading to states parties to the 1992 CLC.

Jurisdictional Issues:

However the coastal states may still have issues about the jurisdiction. For example, according to article IX.1 of the 1992 CLC, "the coastal states which suffer oil pollution damage either in the territorial waters or in the EEZs or where preventive measures have taken place, have jurisdiction over claims under the 1992 CLC".[104] Additionally, according to article IX.3 of the CLC, after the limitation fund is constituted the courts of the state where the fund is constituted has exclusively jurisdictions in respect of the management and distribution of the limitation fund.[105] Moreover, before any claim has been brought, the owner is able to establish a limitation fund in any off the competent jurisdictions.[106] As a result, under the 1992 CLC, the jurisdictional initiative can be with the ship – owner who may wish to invoke one of several competent jurisdictions by establishing a limitation fund there.

The IOPC Funds:

The IOPC Funds are two intergovernmental organizations (the 1992 Fund and the Supplementary Fund) which provide compensation for oil pollution damage resulting from spills of persistent oil from tankers.[107]

The 1992 IOPC Fund:

Starting with the 1992 IOPC Fund as aforementioned is the second tier of compensation which is available under the 1992 Fund Convention for pollution damage suffered in a Contracting

[103] IBID
[104] CLC 1992, Art. IX.1
[105] CLC 1992, Art. IX.3
[106] Yvonne Baatz, Ainhoa Campas Velasco at al, no.70, 397
[107] 'IOPC FUNDS | Home' (*Iopcfunds.org*, 2019) <https://iopcfunds.org/> accessed 7 September 2019.

state to that Convention. The important point is that the 1992 IOPC Fund is covering only situations in which the owner's liability is excluded under the Article III.2 of the 1992 CLC. As a result, the fund will generally pay out only in situations where the pollution damage was caused by a natural phenomenon of an exceptional, inevitable and irresistible character or else the whole damage was caused by any act or omission done with the intent to cause damage by a third party. Another scenario which the fund will pay out is when the damage 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.[108] Therefore, in the situations mentioned above, an equal amount of compensation will be provided by the IOPC Fund and the ship – owner will not be liable.

On the other hand there are some situations where the Fund will not pay any compensation for the pollution damage which occurred in a non – Contracting State. [109]Additionally, as defined in the Convention, there are two situations where the Fund will not be liable for the pollution damage.[110] The first situation is where the pollution damage resulted from an act of war and the second situation is where the claimant cannot prove that the pollution damage resulted from an incident involving one or more ships.[111] As a result, there are some situations where the ship – owner will not be liable and thus an equal amount of compensation will be provided by the IOPC Fund.

Defenses of the Fund Convention:

The 1992 Fund will not be liable to pay any compensation in three situations. Firstly, the same as the 1992 CLC, the Fund Convention will not be liable if the pollution damage resulted from an act of war, hostilities, civil war or insurrection.[112] Secondly, Fund Convention will not be liable if the claimant cannot prove that the damage resulted from a case which involves one or more ships[113] and lastly, if there has been contributory negligence on the part of an individual claimant, whereupon the fund may be exonerated wholly or partially from its liability as regards that claimant.[114] From the above three points it can be seen that the defenses which are available under the 1992 Fund Convention are more limited than those available to the ship – owner under the CLC Convention.

[108] MSA 1995, s. 175 (1) (a) (iii)
[109] Aleka Mandaraka-Sheppard, no.70, 849
[110] Aleka Mandaraka-Sheppard, no.70, 846
[111] United Nations, no. 4, 16
[112] Aleka Mandaraka-Sheppard, no.70, 854
[113] 1992 Fund Convention, Art. 4(2)
[114] 1992 Fund Convention, Art. 4(3)

There are also some "mystery" situations of oil spills where there is oil pollution damage but the vessel which caused the oil spill has not been identified.[115] In such a type of oil spill, the claimant can still be compensated by the IOPC Fund but only if he can prove that the oil that caused the damage came from at least one ship.[116] However, the problem will be when the damage came from an act of war, hostilities, civil war, insurrection or from a governmental ship or where the claimant is not able to prove that the damage resulted from a ship. The problem will arise because neither the ship – owner, nor the IOPC Fund will have any liability under the 1992 CLC with the result for the claimant to try and recover against other parties.

There is however the possibility of the claimants to lose their rights to compensation under the 1992 Fund Convention. This may happen if the claimant brings the court action against the 1992 Fund in more than 3 years of the date when the damage occurred. On the other hand, there are some situations where immediately after the incident, there is not evident that the ship – owner is either exempted from liability under Article III.2 of the 1992 Fund or not able to pay[117] or simply that damages will exceed the ship – owner's limits of liability. As a solution in order to avoid the unnecessary claims against the IOPC Fund, the Fund Convention enables the claimant to avoid the three – year time bar by just providing a notification to the IOPC Fund in a way will enable the Fund to intervene in the legal proceeding if it decides to do so.[118]

In the end, the important point is that the notification will be sufficient in order to avoid the three – year time bar only and unless the claimant brings a lawsuit within six years from the time the damage occurred the action will be time barred nevertheless.[119] However, provided action has stated within the appropriate limits and the damage is covered by the 1992 IOPC Fund and as a result the claimant will be entitled to receive compensation for pollution damage extra from the amount which he received under the 1992 CLC. In addition, the limits of liability which are established by the Fund include the owners' limits of liability under the 1992 CLC, which means that whether the ship – owner pays its part or whether it does not pay anything, the overall amount of compensation will be the

[115] Aleka Mandaraka-Sheppard, no.70, 844
[116] S. Stout, G. Douglas, A. Uhler, K. McCarthy and S. Emsbo – Mattingly, "*Identifying the Source of Mystery Waterborne Oil Spills: A case for Quantitative Chemical Fingerprinting*" (2005), Environmental Claims Journal, 71
[117] Yvonne Baatz, Ainhoa Campas Velasco at al, no.70, 398
[118] 1971/1992 Fund Convention, Art. 7.6
[119] 1971/1992 Fund Convention, Art. 6.1

same.[120] As a result from the above, the limits of liability payable under the 1992 Fund and the 1992 CLC are available as an overall total amount against which recovery is possible. Subsequently, in situations where the ship – owner pays its part, the IOPC Fund will "top – up" the amount, while in other cases the whole compensation will be paid by the IOPC Fund.

Jurisdictions of the 1992 IOPC Fund Convention:

Due to the fact that some States have competent jurisdiction under the 1992 CLC may or may not be a party to the 1992 IOPC Fund Convention and this have as a result the fact that the 1992 IOPC Fund Convention is more complicated than the distribution of the jurisdiction under the 1992 CLC.[121] Is order for this issue to be resolved, two situations are provided for, first, where an action has stated before a competent jurisdiction under the 1992 CLC; if this state is also a party to the 1992 Fund Convention, then the same court has jurisdiction against the 992 IOPC Fund.[122] According to article 179 (1), subrogation of rights of claimants who have been paid out by the IOPC Fund is also provided for, and the subrogation covers third party claims against the ship – owner and its insurer.[123] Additionally, it covers situations where the ship – owner pays for pollution mitigation and prevention expenses which it can then recover against another ship following a collision, and with simple words, the subrogation covers third party claims against the ship – owner and its insurer.[124]

The 2003 Supplementary Fund:

The protocol:

In order for the Contracting states to present the protocol had in mind the 1992 CLC and considered the 1992 Fund Convention. The most important point which considered by the Contracting States was that the maximum compensation which was afforded by the 1992 Fund Convention might be insufficient to meet compensation needs in certain circumstances in some contracting States to that Convention.[125] The main belief of the Contracting States was that the supplementary scheme should request to ensure that the victims of oil pollution damage are compensated in full for their loss or damage. In addition that the victims should weakened the difficulties faced by victims in cases

[120] Yvonne Baatz, Ainhoa Campas Velasco at al, no.70, 399
[121] IBID
[122] Baughen, "*Marine Pollution*", Chapter 17
[123] MSA 1995, Art. 179 (1)
[124] Yvonne Baatz, Ainhoa Campas Velasco at al, no.70, 400
[125] Protocol to the International Convention on the Establishment of an International Fund For Compensation For Oil Pollution Damage, 1992, (London, 2003), 3

where there is a risk that the amount of compensation available under the 1992 CLC and 1992 Fund Convention will be inadequate to pay established claims in full.[126] Lastly they believe that as a consequence the IOPC 1992 has decided provisionally that it will pay only a proportion of any established claim.[127]

The need of the protocol it was recognized after some major incidents, for example the Nakhodka 1997, the Erika 1999 and the Prestige 2002, that the maximum amount available for compensation from the 1992 Fund was not enough and sufficient to provide full compensation to the victims in such a major cases. On 16 May 2003, the IMO approved the Protocol because it has as a purpose to increase the amount of compensation available to victims of pollution damage arising from a major incident involving the carriage of persistent oil as cargo by sea.[128] The 2003 Fund Protocol was finally entered into force on 3 March 2005. In addition, the main difference is that the 2003 Supplementary Fund increases the compensation which is available to the victims of oil pollution damage to a total of 750 million SDR. The detail of the 2003 Supplementary Fund is that only Contracting States of the 1992 IOPC which are also contracting states to the 2003 Supplementary Fund may be able to apply for. As a result the Supplementary Fund will only be available in certain circumstances where it will provide a third tier of additional compensation where, (a) "over and above the compensation available under the 1992 CLC and 1992 Fund regime, for pollution damage,[129] (b) caused in the territory, including the territorial sea, and the EEZ of such a state[130] and (c) for preventive measures, wherever taken, to prevent or minimize such damage.[131] Although, the Supplementary Fund will only cover incidents which happen after the entry into force of the 2003 Protocol.[132]

The 2003 Supplementary Fund will only pay compensation when the Assembly of the 1992 Fund has decided that the total amount of establishing claims will exceed the aggregate amount of

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[126] (*Assets.publishing.service.gov.uk*, 2019) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/235985/8490.pdf> accessed 8 September 2019.

[127] Aleka Mandaraka-Sheppard, no.70, 850

[128] Aleka Mandaraka-Sheppard, no.70, 856

[129] 2003 Protocol, Art. 3

[130] Aleka Mandaraka-Sheppard, no.70, 857

[131] IBID

[132] Aleka Mandaraka Sheppard, "*Modern Maritime Law and Risk Management", Chapter 19, "Civil Liability for Marine Pollution, Damage by Hazardous/noxious substances, nuclear incidents and compensation*", (2nd edn, 2009), 10/07

compensation available under the 1992 Fund Convention.[133] As a result, the Assembly of the 1992 Fund has considered that provisionally or finally the payments will only be made for a proportion of any established claim. After that, the Assembly will make a decision whether and to what extend the Supplementary Fund shall pay the proportion of any "established claim" not paid under the other two Conventions, 1992 CLC and 1992 Fund Convention.[134] According to article 1(8) of the 2003 Fund Protocol, an "established claim" is "the claim which has been recognized by the 1992 Fund or been accepted as admissible by decision of a competent court binding upon the 1992 Fund not subject to ordinary forms of review and which would have been fully compensated if the limit set out in Article 4(4) of the 1992 Fund Convention had not applied to that incident".[135]

Moreover, based on the same principles as apply to the financing of the 1992 Fund, as set out in Article 10 of the 2003 Fund Protocol, this "third optional tier" will be financed by oil receivers in the States which become parties to the protocol.[136] However, the 2003 Protocol has a different opinion since it includes a novel provision in Article 14 which make sure that there is a "membership fee" for the countries with smaller oil receipts to obtain the benefits of the Supplementary Fund.[137] Although, in cases where the actual receipts of contributing oil in the State are less than 1 million tons, it is considered to be a minimum receipt of 1 million tons of contributing oil in the State. As a result, the state which chooses to become a party in such circumstances to the Protocol assumes the liability to pay the contribution based on the deemed 1 million ton receipt. If the State disagrees with the above, the other way is to pay the difference between the 1 million tons deemed receipt and the actual receipts within the State that fall within the Protocol.[138] In contrast, in the case where the aggregate amount of "contributing oil" is less than 1 million, then the Contracting State has to pay contributions for a quantity of "contributing oil" corresponding to the difference between the aggregate quantity of actual contracting oil receipts reported in respect of that State, and 1 million.[139] Finally, the contributions by Contracting States have been needed to cover administrative costs only because the Supplementary IOPC Fund has not yet been required to prove compensation, thus the contributions are nominal.

[133] Yvonne Baatz, Ainhoa Campas Velasco at al, no. 70, 402
[134] 2003 Fund Protocol, Art. 5
[135] 2003 Fund Protocol, Art. 4(2)
[136] 2003 Fund Protocol, Art. 10
[137] 2003 Fund Protocol, Art. 14
[138] Aleka Mandaraka-Sheppard, no.70, 858
[139] United Nations, no.4, 18

The principal benefit of the Supplementary IOPC Fund is that only in rare circumstances there will be the need to reduce any compensation payments proportionately between claimants. This happened because there are extensively high limits of liability and as a result, all the claimants should receive 100% Compensation.

Nevertheless, as for the rights of subrogation, the Supplementary Funds acquires two things. Firstly, the victim's rights of subrogation under the 1992 CLC against the ship – owner or his insurer[140], secondly, the rights which the person compensated may enjoy under the 1992 Fund Convention against the 1992 Fund[141] Subsequently, likewise in the 1992 CLC and the 1992 Fund Convention, the 2003 Fund Protocol prejudices any right of recourse or subrogation of the Supplementary Fund[142] against persons other than the ship - owner and his insurer/guarantor, such as port authorities. Respectively, a state party which had paid compensation for pollution damage in accordance with provisions of national law also acquires the rights that the person so indemnified would have enjoyed under the 2003 Protocol.

Further Development: STOPIA 2006 and TOPIA 2006:

As the essay moving on, it can be seen that the developments of the conventions and the law become more and more. In fact, the creation of the 2003 Supplementary Fund on the one hand, it may have resolved the demands of the EU for higher compensation to pollution victims but on the other hand has distributed the agreed balance between ship – owners and the oil industry. This happened because the funds for the 2003 Supplementary Fund are solely provided by the oil importers. Fortunately, this issue has been resolved by two new private voluntary agreements, the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006 and the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006.[143]

In addition there was a need for development because there was growing international pressure, thus occurred an extensive review of the CLC and Fund Conventions. This particular review was examining the ship – owner's liability and related issues, such as further increases in the limitation fund. In addition this review has been considering the possibility of including characters' liability in the compensation regime, and an additional layer of liability to be used where the spill

[140] 2003 Supplementary Fund Protocol, Art, 9(1)
[141] 2003 Supplementary Fund Protocol, Art, 9(2)
[142] 2003 Supplementary Fund Protocol, Art. 9(3)
[143] Yvonne Baatz, Ainhoa Campas Velasco at al, 403

involves a deficient oil tanker.[144] However, there was a clear majority who support that for the revision of the CLC regime it would be required and a large number of governments voiced their objections to revising the international regime. For many states the decision to stop revision of the CLC regime was made based on the offer made by ship - owners, though their P&I clubs, to share the overall cost of claims equally with oil receivers by voluntary agreements of the STOPIA[145]. In addition, with regarding indemnity to the 1992 Fund, and the TOPIA and regarding indemnity to the supplementary fund, regardless of the size of the pollution tanker.[146]

Due to the fact that, the revision was abandoned, the Boards of all international Group P&I Clubs agreed to put in place a mechanism for voluntarily increasing the minimum limit of ship – owner liability under CLC 1992 in respect of small ships. Due to this, it became known the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) and apply to approximately 6,000 tank vessels and representing about 75%of the world fleet of tankers falling within the CLC "ship" definition.[147] Additionally, STOPIA will apply only in the event of a small tanker, specifically up to 29,548 GT causing pollution damage in a 2003 Protocol state when liability is imposed under the 1992 CLC.[148] Furthermore, the owner of the relevant tanker agrees to indemnify the 1992 Fund in respect of claims paid in excess of the ship – owner's relevant CLC limit of liability, up to 20 million SDR per incident.[149] In relation to, the CLC 1992 the 20 million is much more comparing to the limit of 4.5 million SDR which are applicable under the CLC 1992.[150] In the end, in 2006, after the STOPIA was reviewed, it was applicable to all States that are parties to the 1992 Fund Convention and "The Solar I" was the first incident which came within STOPIA.

On the other hand, there is the TOPIA agreement. The discussions and consultations that took place between the Fund Secretariat, OCIMF, the P & I Clubs' Board, Intertanko and ICS, has as result the additional agreement, the TOPIA, by which ship – owners will be contractually forced to indemnify the Supplementary Fund in respect of 50% of the amount of any claim falling on the Supplementary Fund. This will happen in order for the burden imposed under the 2003 Protocol to be

[144] Aleksa Mandaraka Sheppard, no.132,
[145] Aleka Mandaraka-Sheppard, no.70, 844
[146] 'TOPIA 2006 And STOPIA 2006' (*Nepia.com*, 2019) <http://www.nepia.com/news/circulars/topia-2006-and-stopia-2006/> accessed 9 September 2019.
[147] Aleksa Mandaraka Sheppard, no.132
[148] IBID
[149] Aleka Mandaraka-Sheppard, no.70, 861
[150] Yvonne Baatz, Ainhoa Campas Velasco at al, 403

equally shared.[151] In relation to STOPIA, TOPIA applies to all the relevant tankers, regardless of their tonnage measurements.

Both STOPIA and TOPIA includes identical review clauses that provide for a review of 1992 CLC and 1992 Fund claims data from the period of 20th February 2006, when both of the agreements became effective, to 20th February 2016.[152] The International Group, the 1992 Fund Secretariat and the Oil Companies International Marine Forum (OCIMF) have been initiated this review at the start of 2016. As a result, was the total cost of claims paid by the ship – owners under the system in this ten year period which was significantly higher than the total cost of claims paid by any cargo contributors in the same period.[153] Both STOPIA and TOPIA agreements include some clauses to adjust the financial burden where such an imbalance arises. Although, the International Group decided not to implement any of the measures in the Agreements to adjust the financial burden, and this happen after the consultation with the relevant ship – owner representative bodies.[154] Due to the fact that, the international Group recognized that the date collated during the period did not fully reflect the total payments to be made by the 1992 Fund in the "Hebei Spirit" case. Hopefully the total payments will be covered by the next ten year review.

STOPIA and TOPIA Amendments:

In the process of the review, they were agreed some changes which will address both the introduction of future sanctions legislation and the time period and operation of future reviews. In the following three points is provided the effect which these amendments will have. Firstly, the ship – owners and the International Group Clubs are going to be protected in circumstances where, for reasons beyond their control, there are prevented for reimbursing the 1992 Fund and/or the Supplementary Fund.[155] This will have as a result the prevention of the ship – owners and the insurers

[151] Aleka Mandaraka-Sheppard, no.70, 860
[152] 'STOPIA 2006 (As Amended 2017) And TOPIA 2006 (As Amended 2017) – 2017 Amendments - The Shipowners' Club' (*The Shipowners' Club*, 2019) <https://www.shipownersclub.com/stopia-2006-as-amended-2017-and-topia-2006-as-amended-2017-2017-amendments/> accessed 10 September 2019.
[153] 'IOPC FUNDS | STOPIA And TOPIA' (*Iopcfunds.org*, 2019) <https://iopcfunds.org/about-us/legal-framework/stopia-and-topia/> accessed 9 September 2019.
[154] 'TOPIA 2006 And STOPIA 2006' (*Nepia.com*, 2019) <http://www.nepia.com/news/circulars/topia-2006-and-stopia-2006/> accessed 9 September 2019.
[155] 'STOPIA 2006 (As Amended 2017) And TOPIA 2006 (As Amended 2017) – 2017 Amendments - The Shipowners' Club' (*The Shipowners' Club*, 2019) <https://www.shipownersclub.com/stopia-2006-

from making any payments which will fall within the scope of any applicable sanctions regime. The second effect of these amendments will be that future reviews are going to be aligned with the original review period of ten years instead of a future review of claim data over just a five year period.[156] Lastly, with these amendments it will be ensured the fact that the cumulative date collected over all review periods, now it will be considered in some future reviews in contrast with the old regime which were just the claims data in that future review period. In the end, these two amended Agreements are attached to this circular and have been retitled STOPIA 2006 (as amended 2017) and TOPIA 2006 (as amended 2017).[157]

General Challenges from the 1992 CLC and the 1992 IOPC Fund System:

Starting with, there are some concerns which indicate that the established system was under pressure. These indications can be illustrated after the Prestige incident by testing the entire arrangement.[158] Even fifteen years after the Prestige incident some States are complain that the payments have only been partly been made. From this phenomenon obviously it can be seen that the objective of the quick settlement of claims and avoidance of court proceedings have not been achieved.[159] The most controversial decision in a case is that of the Spanish Supreme Court of 2016. In this case the Supreme Court turn upside down the decision on the facts of a lower Court and finally found that the master, in general, immune from proceedings unless acting purposefully or recklessly and with knowledge of the relevant damage, this was arguably a breach of the channeling of liability.[160] However the decision continues and the court held that the ship – owner to have subsidiary civil liability and without a right to limit its liability. As for the P&I Club, the could be held that it is directly liable to the limit of the insurance policy instead of the 1992 CLC limits despite the express protection afforded to the liability insurer under the 1992 CLC.[161] Another issue concerns the pollution damage definition, since the Supreme Court recognized the possibility of moral damage claims and other heads of claims which does not fall within the pollution damage definition of the Convention. In

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as-amended-2017-and-topia-2006-as-amended-2017-2017-amendments/> accessed 10 September 2019

[156] IBID

[157] 'TOPIA 2006 And STOPIA 2006' (*Nepia.com*, 2019) <http://www.nepia.com/news/circulars/topia-2006-and-stopia-2006/> accessed 9 September 2019.

[158] IOPC 1992, Apr.16/3/2

[159] IBID

[160] Yvonne Baatz, Ainhoa Campas Velasco at al, no.70, 401

[161] IBID

advance, the moral damages were resulting from the pollution was either loss of enjoyment, damage to reputation, brand image, and moral damage arising from damage to the natural heritage.[162] This decision has as a result that the national court had reached a decision through a national interpretation of the 1992 CLC utilizing the liability regime and the supporting financial security mechanisms.[163] Unfortunately, the national court took that decision but with ignoring the compromises on which the convention was based, the counterbalancing limitation of liability arrangements and the extent of damages recoverable under this international convention.

As mention before, the CLC 1992 and the IOPCF provide for enforcement of final decisions in all Contracting States. As a result, there ought to be little discretion in delaying the enforcement of such decisions after the final judgment of the court that has the jurisdiction. Furthermore there are two different categories of claims under the P&I Club in order to protect itself against enforcement, (a) includes those claims under the CLC for which it accepted liability, (b) under the insurance contract which are expressly agreed to be determined by English Arbitration and subject to the pay – to – be paid rule.[164] As a result, it remains unsolved whether the decision will provide a successful defence in relation to the Spanish Court Decision in relation to the liability in excess of the 1992 CLC limits, and also for claims not considered by the IOPC Fund as falling under the regime. Whatever the result will be, the master of the "Prestige" has appealed his conviction.[165]

Challenges which arising from the application of provisions of the Conventions:

Judicial Reflection on the Application of Conventions to Oil Pollution Incident

Staring with, this part of the dissertation will be analyzed in relation to the Erika disaster. Firstly, just for a reminder, the Erika tanker broke into two and sank on 12 December of 1999 in the French exclusive economic zone and as a result, in the following days, there were significant

[162] Brittan J. Bush, "*The answer lies in admiralty: Justifying oil spill punitive damages recovery through admiralty law*", Vol. 41, No. 4 (2011), 1260

[163] IBID

[164] 'Facilitating The Speedy Payment Of Oil Spill Compensation Claims Under The CLC And Fund Convention (2002) - ITOPF' (*Itopf.org*, 2019) <https://www.itopf.org/knowledge-resources/documents-guides/document/facilitating-the-speedy-payment-of-oil-spill-compensation-claims-under-the-clc-and-fund-convention/> accessed 9 September 2019.

[165] *The London Steam Ship Owners Mutual Insurance Association Ltd* v *The Kingdom of Spain and Another* "The Prestige"(No.2) [2013]EWCH 3188

damages along the French Coastline. The regime which applies for compensation to this kind of "events", as always, is the CLC and the linked international convention on the establishment of an international fund for compensation for oil pollution damage, (IOPC Fund). Both of these two conventions were ratified by France on 1994.[166] As aforementioned the victims of each incident should filled the process of compensation before the time particular time limits.[167] In the Erika case the victims before the expiry of the time limit filed proceedings in the French civil courts against the registered owner of the Erika, her technical management company, her voyage character and the IOPC Fund.[168] Additionally, the claims which have been submitted to and assessed by the Fund include mariculture ad oyster farming, shellfish gathering, fishing boats, fish and shellfish processors, tourism, property damage and clean up – operations which means that the damage was huge!

Although, the above claims were advanced on the bases of the CLC Convention and the aim of the filing was to maintain the claimants' right pending the outcome of court proceedings. However, the victims initiated an action on a different basis and against two other companies of the Total Group, Total SA and Total Petroleum Services and also against the vessel's classification society.[169] Nonetheless, it is obvious that the amount of compensation money is enormous and also that the CLC and IOPC Fund Conventions would not be sufficient to compensate all of the victims. As a result, the French State and Total choose not to be compensated through the IOPC Fund until all the other victims of pollution to be fully compensated.

Instead of achieving the designed purpose of obtaining appropriate compensation for the victims, a number of regions, departments and communes bordering the Atlantic Coast believe that it was much more important to see the perceived guilty parties pursued through the courts. In addition this number of regions, departments, etc., wanted to vindicate the "polluter pays" principle in the environmental law in order to for refusing to admit that the CLC and IOPC Fund Conventions respected it.[170] Moreover, they want to obtain compensation only for pure ecological damage because

[166] Baris Soyer & Andrew Tettenborn, "*Avoiding international legal regimes: The Erika Experience*", (1st edn, 2012), 1/10

[167] IOPC Fund, Art. 6

[168] *Incidents Involving the IOPC Fund, International Oil Pollution Compensation Funds*, (2011), Kent, UK, 8

[169] Baris Soyer & Andrew Tettenborn, no.24

[170] Marlene Calderón Veiga and Jon Wonham (*2001*) Applying the "Polluters Pays Principle" to Fund Oil Spill Preparedness in the North East Atlantic. International Oil Spill Conference Proceedings: March 2001, Vol. 2001, No. 1, pp. 357-362

under the CLC Convention there was not something similar.[171] It can be concluded that from the above statements, Erika case has given rise to a strong opposition between the environmentalist and the maritime world.

Some Difficulties concerning the CLC Regime:

Foremost, all the state parties are legally bound to implement relevant provisions of the conventions, in other words, the application of international conventions involves the implementation in state parties.[172] Furthermore, it has been a success in predicting the law and procedure common throughout the world, even though the application of the conventions varies from a state party to another one.[173] For example, there are applications that include criminal punishments and others that apply to civil law exclusively. As for the CLC regime, supply to the national courts of each state party with some exclusive jurisdiction to hear claims which arise from pollution damage.

In several cases the application of the CLC regime in state parties is facing some difficulties due to differences in legal systems applicable in different member states. This happened due to the fact that there are just a few established legal systems in practice throughout the whole huge world.[174] The strange thing is that even if you are in the same state, the conventions may be treated differently in each court. In order to resolve this issue, different national law and procedures have been employed in courts of state parties in order to determining the issues of oil pollution liability and compensation but much more where there is a gap in the international regime. As a result, a distortion of the purpose of harmonization of laws and procedure for oil pollution damage issues throughout the world would not be a success in a long term.

The challenges which arising from claims for environmental damage:

Moving on it is important to refer also to the environmental damage because there might arise some challenges under the CLC. Starting with, the CLC regime has a restrictive conception of compensation for the environmental damage due to the fact that the environmental

[171] Chang, S. E., J. Stone, K. Demes, and M. Piscitelli. 2014, "*Consequences of oil spills: a review and framework for informing planning. Ecology and Society"* **19**(2): 26.
[172] 'CLC – The Specialist Property Law Regulator' (*Clc-uk.org*, 2019) <https://www.clc-uk.org/regulation/why-be-regulated-by-the-clc/> accessed 9 September 2019.
[173] (*Iopcfunds.org*, 2019) <https://www.iopcfunds.org/uploads/tx_iopcpublications/Text_of_Conventions_e_01.pdf> accessed 9 September 2019.
[174] Tumaini S. Gurumo, Lixin Han, no.3, 186

damage is not been defined under the CLC Convention. Although the CLC Convention refers to the impairment of the environment but which legally may not constitute any environmental damage.[175] In addition, the meaning of the concept of environmental damage does not include all the possible circumstances of environmental damage. This can be illustrated with the law and policy of the Fund Victim of oil pollution damage since it can claim for impairment of the environments, but such claims are limited to property damages and economic aspects.[176] Thus, someone can be said that the problem is that the CLC regime may compensate only cleaning and restatement costs.

Another issue is that the environmental damage itself or the pure ecological damage is considered irreversible and thus it is not addressed by the regime.[177] After the Erika experience as mentioned before there have been many alarms for legal changes in the conventions. This occurs again where in the legal proceeding in relation to the Erika incident, the Court of Appeal in Paris, highlighted that the compensation for the ecological damage depends of the judicial process and does not refer to the CLC regime.[178] This will obviously lead to the departure of the Court of Appeal from the law of the Convention to allow any compensation for ecological damage done to marine environment.

Another issue is that some of the claims are rejected on grounds of non - admissibility due to the fact that the international regime is restrictive in the concept of the environmental damage.[179] However, in some situations the domestic law of each state recovers some of the claims for pollution damage which are not admissible under the CLC. Taking as an example the Erika experience, the claim by the government authorities for the damage to the marine environment, is unrelated to any costs incurred and is calculated on an abstract or theory basis.[180] In other words, the issue is that any different jurisdiction in State Parties may consider a claim in a different way, for example some allow them and some reject them, but even the ones that allow the claims the criteria are different. This

[175] P.K. Mukherjee, "*Liability and Compensation for Environmental Damage Caused by Ship – Source Oil Pollution: Actionability of Claims*", in Maritime Pollution Liability and Policy, M. Faure, H lixin and S. Jongjun, eds. New York: Kluwer Law International, 2010, 75-80

[176] Tumaini S. Gurumo, Lixin Han, no. 3, 186

[177] Y. Rabuteau and J. Mangold. (July 2011), "*Claims and compensation for small, medium and major spills"* (oil and HNS). Atlantic Area Transnational Programme

[178] 'Environmental Effects - ITOPF' (*Itopf.org*, 2019) <https://www.itopf.org/knowledge-resources/documents-guides/environmental-effects/> accessed 9 September 2019.

[179] C.M. De la Rue and C.B Anderson, "*Shipping and the environment: Law and Practice*" (1998), 26

[180] Y. Rabuteau and J. Mangold. (October 2010) "*Comparative study of the situations regarding environmental damages*", Atlantic Area Transnational Programme

proves that the convention needs improvements and this can be with a uniform law and procedures on liability and compensation for oil pollution damage.

As seen before, the compensation which is available under the CLC regime is restrictive which means what the compensation is available but only to a certain amount because of the provisions on the limits of liability.[181] This means that, in a situation where the scale of oil pollution damage is huge there is no possibility for the victim to be adequately compensated. Although, imagine how difficult will be for a full compensation due to damage of marine environment where massive contamination of the same causes marine oil pollution. From the aforementioned about compensation it is clearly obvious that there must be reasonable measures of reinstatement in order to bring the damages site back to the same ecological state which it would be if the oil spill never occurs. Since the oil spills happened, the only thing which should be taken into account is the challenges of the Conventions which arise from each oil spill in order for their next application to be reasonably improved. This will help the achievement of some higher goals for the adoption of the conventions but as well as provide further support to the marine environment.

Levels of Protection available to the victims

Taking into consideration the 1969 CLC, the 1992 CLC, the 1992 Fund Convention and the 2003 Supplementary Fund Protocols, States might be divided into five groups. The groups are divided according to the term of the level of protection afforded to victims of tanker oil pollution incidents and the potential benefit which may be associated with future accession to any ot other international legal instruments which are in force.[182] The five groups are as follows, (a) states that have not ratified or acceded to any of the relevant international legal instruments that are part of the CLC – IOPC Fund Regime, (b) States that continue to adhere to the 1969 CLC, (c) states that adhere to the 1992 CLC but have not adopted the 1992 Fund Convention, (d) states that adhere to the 1002 CLC and 1002 Fund Convention, (e) states which adhere to the 1992 CLC and 1992 Fund Convention and, additionally, the 2003 Supplementary Fund Convention. This part of the dissertation assumes to prove how each combination work and how effective is.

Starting with the first situation which contains the states that have not ratified or acceded to any of the relevant international legal instruments which are part of the CLC – IOPC Fund regime, the

[181] (*Steamshipmutual.com*, 2019) <https://www.steamshipmutual.com/pdf.htm?id=261798&pdf=true> accessed 10 September 2019.
[182] United Nations, no. 4, 23

compensation available to the victims of tanker oil pollution depends on the national law of the particular State.[183] Additionally, a considerable number of the 193 states that are Member States of the United Nations are at present not party to any of the relevant international legal instruments.[184] All of the information will be illustrated in the following table from the IOPC official organization website. The strange thing is that instead of the many landlocked countries included in this group, there are also some coastal developing countries which are too possible to face a significant exposure to oil pollution incidents and could be benefited if they accession to the CLC 1992 and the 1992 Fund Convention. It should be mentioned that 37 states continue to adhere to the 1969 CLC but several of these states are also contracting to the 1992 CLC and in some other cases maybe also to the 2003 Fund Convention. As a result those states should denounce the 1969 CLC because failure to denounce the 1969 CLC may give rise to legal uncertainty and potentially disputes because the oil pollution victims in these states would benefit from the relevant compensation available under the 1992 CLC and 1992 Fund Convention.[185] The good thing about accession to the 1992 Fund Convention would be that there will not be any financial burden for the states who have relevant annual receipts of oil carried by sea less than 150.000mt in order for the 1992 IOPC not to be required.

Continuing to the second category, here is the states which continue to adhere to the 1969 CLC where the compensation which is available to the victims of tanker oil pollution is limited to a maximum amount. This amount is envisaged under the 1969 CLC and depends on the ship size and can be up two 14 million SDR per situation. The disadvantage is that any additional compensation will not be available from the 1971 Fund for oil pollution incidents occurring after 24 May 2002 since is the date when the 1971 Find Convention applies.[186]

As mentioned above, states whose relevant annual receipts of oil carried by sea are less that 150.000 mt would entail no financial burden according to the CLC – IOPC 1992 Fund Regime because financial contributions to the 1992 IOPC Found will not be required.[187] On the other hand, in situations where the reported receipts of oil exceed the 150.000 mt, the relevant receivers would be

[183] United Nations, no.4, 23
[184] 'International Convention On Civil Liability For Oil Pollution Damage (CLC)' (*Imo.org*, 2019) <http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-on-Civil-Liability-for-Oil-Pollution-Damage-(CLC).aspx> accessed 10 September 2019.
[185] United Nations, no.4, 24
[186] IBID
[187] Catherine J. Grey, "*The Cost of oil spills from tankers: an analysis of IOPC Fund Incidents*", (1999), 3

required to pay annual contributions on a per tonne basis according to 1002 IOPC Fund. The good point about the reported receipts is that either in one way or another there will be a solution for the financial burden.

In the following table, found in the IOPC Fund official organization website it will be presented the state parties to the 1969 Civil Liability Convention as at 1 January 2012 and the states which are in bold are the states that adhere to the CLC 1969 but have note acceded to the 1992 CLC.

37 States Parties to the 1969 Civil Liability Convention[188]		
Azerbaijan	Georgia	**Mongolia**
Benin	Ghana	**Nicaragua**
Brazil	**Guatemala**	Peru
Cambodia	**Guyana**	Saint Kitts and Nevis
Chile	**Honduras**	**Sao Tome and Principe**
Costa Rica	Indonesia	Sausi Arabia
Cote d' Ivoire	**Jordan**	Senegal
Dominican Republic	**Kazakhstan**	Serbia
Ecuador	Kuwait	Syrian Arab Republic
Egypt	Lebanon	Turkmenistan
El Salvador	**Libya**	United Arab Emirates
Equatorial Guinea	Maldives	
Gambia	**Mauritania**	

The third category is which the one where states adhere to the 1992 CLC but have not adopted the 1992 Fund Convention which means that the compensation which is available to the victims of oil pollution is limited to the maximum amount envisaged under the 1992 CLC.[189] In addition, the compensation under 1992 CLC is up to 89,770 SDR, depending always to the ship size, per incident.[190] The disadvantage about this category is that in situations where additional compensation needed there is no available under the 1992 Fund Convention. Since this group of states include some coastal developing countries, like China, Egypt, Indonesia, which may face

[188] 'IOPC FUNDS | About Us' (*Iopcfunds.org*, 2019) <https://www.iopcfunds.org/about-us/> accessed 10 September 2019.
[189] 'Shipping 2019 | Laws And Regulations | ICLG' (*International Comparative Legal Guides International Business Reports*, 2019) <https://iclg.com/practice-areas/shipping-laws-and-regulations#general-chapters> accessed 10 September 2019.
[190] United Nations, no.4, 25

potentially significant exposure to tanker oil pollution incidents[191], thus is a benefit from accession to the 1992 Fund Convention. It is obviously an advantage for those states because the 1992 CLC will provide a significant amount of compensation to them.

Moving on to the fourth category where states adhere to the 1992 CLC and 1992 Fund Conventions, the compensation is available to victim of oil pollution but is limited to the maximum amount according to the 1992 Fund Convention per incident. Although the amount of the compensation is huge since is 203 million SDR per incident and again depending on the size of the ship and including any payment under the 1992 CLC. This group is the biggest one and it benefits from a two – tier liability and compensation regime. Due to this, all the states adhere to this group ensure the availability of quite major amounts of compensations. This can be illustrated by the fact that this particular group can be benefited from the 2003 Supplementary Fund Protocol with a significant additional amount of compensation added to the 1992 Fund Convention with an overall amount of 750 million SDR per incident. The above discussion was the good part of this group of states but on the other hand there are also some disadvantages. in addition, the access to the 2003 Supplementary Fund will result to some financial burden and the big problem is that there will be financial burden even for States who have relevant receipts of "Contributing oil" carried by the sea less than 150.000 mt. This is happening because in order for a state to assess the contributions of the IOPC Supplementary Fund each contracting state will have to receive at least one million mt of "contributing oil" per year. As a result, the access to the 2003 Supplementary Fund Protocol may be a big benefit for the Contracting states to the 1992 Fund Convention because there will be low annual receipts of "contributing oil". On the other hand though, there are potentially especially vulnerable to the effect of a major tanker oil spill.

Lastly, the fifth group of states is when the states adhere to the 1992 CLC and 1992 Fund Convention but also to the 2003 Supplementary Fund Protocol. In that case the compensation which is available to the victims is limited to an overall amount of 750 million mt.[192] Moreover the 2003 Supplementary Fund is financed by contributions from receivers of oil and by additional contributions from the respective governments in case where the annual receipts are less than 1 million mt of oil.[193] The disadvantage in this group of states is that the contracting states may be required to make

[191] Jurgen Basedow, Ulrich Magnus, "*Pollution of the Sea – Prevention and Compensation*" (Springer, 2007), 87
[192] United Nations, no.3, 27
[193] "*The International Regime for Compensation for Oil Pollution Damage*", Explanatory Note prepared by the Secretariat of the International Pollution Compensation Funds, (January 2012), 6

additional contributions as all contracting states are deemed to receive at least 1 million mt of "contributing oil" annually.

Possible Future Developments and Measures to be taken:

Starting with, in my opinion there is a great need for a revision on the meaning of the pollution damage under the CLC regime. This measure from the above discussion is obvious that it has to be taken since the CLC regime does not satisfy the modern need for the environmental protection. In addition, as long as the compensation is concerned there will always be the need for the environmental damage to be clearly defined in the CLC Convention. Furthermore, since there are a couple of restrictions about compensation of the victims it is difficult for all the victims to be fully compensated. Thus, it is clear that the victims might be fully compensated if there are no restrictions to compensation for environmental damage in order to allow full restoration of the state of marine environment after the contamination by a respective oil spill.

Moving on to the financial limits which the CLC regime provides, they have to be lifted because if the existing financial limits cannot be lifted for any particular reason it could be feasible to pre allocate a certain percentage of the available fund to be exclusively for environmental damage claims and some other percentage to non – environmental damage claims. If there will always be a reasonable amount for compensation for environmental damage, then there will always be a guarantee that after an oil spill incident all the victims will be fully compensated. As for the coastal states it is discussed that there should be pre – determined studies of the state of marine environment before the happening of oil spill in order to be able to provide sufficient evidence whenever an oil spill occurs.

From the discussion above about which convention each state accessed, it is clearly obvious that the state parties should fulfill the role of implementing relevant convention in their respective states in order to ensure harmonization of the law of the conventions in all the national courts. In addition, if the application of the relevant conventions is in combination of some other relevant maritime conventions, for example MARPOL or SOLAS, it could be more influential in the protection of the marine environment.

It is thought that all of the conventions plays an important role in order for an oil spill to be prevented but on the other hand it is arguable that also owners of the ships that carrying oil should

take necessary measures in order to limit the danger of an incident in the sea and afterwards the effects of oil pollution to the environment.

Conclusion:

To conclude with, it is crystal clear from all the above dissertation thesis that there is a substantial room for improvement in the international conventions regarding the ship – source oil pollution. In addition it appears that the strict liability of a carrier is not effective in covering loss pursuant to vessel – sourced pollution. In general there is a three tier system of compensation which is included of the 1992 CLC Convention, the 1992 Fund Convention and lastly the 2003 Supplementary Fund Convention. Both of the three systems have gradually increased the ship – owners and the IOPC funds' liability limits. However it is said that over the years, the international compensation regimes which are related to oil pollution damage which are established under the CLC and Fund Conventions are one of the most successful compensation schemes. After the Conventions have been revised in 1992, the Contracting states conclude that the liability and compensation regimes have to be revisited for some more modifications in the light of experience in order for the regime to be adapt to the changing need of the current world and the society. By this way, the regime will ensure the regime's survival but still remain attractive to States. In general, there is a huge need for an alternative thinking and think about the different source of energy that will reduce the present dependency on oil so there will be less exploration for oil leading to less transportation to less percentage of oil spills. All these conventions and changes of the conventions have to be taken in mind, but do not forget that there is always the need for a clear focus on the prevention of oil pollution incidents.

Bibliography:

Primary Sources:

Cases:

Michael v *Musgrove* [2011] EWCH 1438

The London Steam Ship Owners Mutual Insurance Association Ltd v The Kingdom of Spain and Another "The Prestige"(No.2) [2013]EWCH 3188

Legislation:

IOPC Fund Annual Report, 2008

IOPC Funds Annual Report 2012

CLC 1992

IOPC Fund Convention 1992

CLC 1969

MARPOL 1973

SOLAS 1974

1992 FUND CONVENTION

2003 SUPPLEMENTARY FUND CONVENTION

MERCHANT SHIPPING ACT 1995

UNCLOS 1973

Protocol to the International Convention on the Establishment of an International Fund For Compensation For Oil Pollution Damage, 1992, (London, 2003)

Secondary Sources:

Books:

Baris Soyer & Andrew Tettenborn, "Pollution at Sea, Chapter 7: Avoiding international legal regimes: The Erika Experience", (1st edn, 2012)

Aleka Mandaraka-Sheppard, "Modern Maritime Law: Managing Risks and Liabilities" (Volume 2, 3rd edn, Routledge, 2013) 822

Yvonne Baatz, Ainhoa Campas Velasco, et al : "Maritime Law", (4th edn, 2018, Routledge), 387

Baughen, "Marine Pollution", Chapter 17

Jurgen Basedow, Ulrich Magnus, "Pollution of the Sea – Prevention and Compensation" (Springer,

2007),

C.M. De la Rue and C.B Anderson, “Shipping and the environment: Law and Practice

Articles

Oscar Schachter and Daniel Serwer, “*The American Journal of International Law*”, Vol. 65, No. 1 (1971)

Catherine J. Grey, “The Cost of oil spills from tankers: an analysis of IOPC Fund Incidents, (1999)

Chang, S. E., J. Stone, K. Demes, and M. Piscitelli. 2014. Consequences of oil spills: a review and framework for informing planning. *Ecology and Society* **19**(2): 26.

P.K. Mukherjee, “Liability and Compensation for Environmental Damage Caused by Ship – Source Oil Pollution: Actionability of Claims”, in Maritime Pollution Liability and Policy, M. Faure, H lixin and S. Jongjun, eds. New York: Kluwer Law International, 2010

Gotthard M. Gauci, “Protection of the Marine Environment through the International Ship-source oil pollution Compensation Regimes, Vol.8 Issue 1, (1999)

Marlene Calderón Veiga and Jon Wonham (*2001*) Applying the “Polluters Pays Principle” to Fund Oil Spill Preparedness in the North East Atlantic. International Oil Spill Conference Proceedings: March 2001, Vol. 2001, No. 1, pp. 357-362

Merv Fingas, “Marine Oil Spills”, (2018)

Obozuwa Enike Dominic, “Legal Consequences of major oil spills”, (2012)

Oosterveen W., “Some recent developments regarding liability for damage resulting from oil pollution – from the perspective of an EU Member”, (2004),

Caryn Anderson, “The International Pollution Federation Limited (ITOPF) Persistent vs Non-Persistent Oils: What you need to know”, (2001)

“The International Regime for Compensation for Oil Pollution Damage”, Explanatory Note prepared by the Secretariat of the International Pollution Compensation Funds, (January 2012)

S. Stout, G. Douglas, A. Uhler, K. McCarthy and S. Emsbo – Mattingly, “Identifying the Source of Mystery Waterborne Oil Spills: A case for Quantitative Chemical Fingerprinting” (2005), Environmental Claims Journal, 71

Brittan J. Bush, “The answer lies in admiralty: Justifying oil spill punitive damages recovery through admiralty law”, Vol. 41, No. 4 (2011), 1260

T.Mensah, “A revolution in Maritime Law: a history of the original legal framework on oil spill liability and compensation” (2003)

Tumaini S. Gurumo, Lixin Han, “The role and Challenge of International Oil Pollution Liability Legislations in the Protection of Marine Environment”, Vol.3, No.2, (2012)

United Nations, “Liability and compensation for ship-source oil pollution” – An overview of the international legal framework for oil pollution damage from tankers, (United Nations Conference on trade and development) No.1, (2012)

Y. Rabuteau and J. Mangold. (July 2011). Claims and compensation for small, medium and major spills (oil and HNS). Atlantic Area Transnational Programme

Y. Rabuteau and J. Mangold. (October 2010). Comparative study of the situations regarding environmental damages. Atlantic Area Transnational Programme

Websites:

(*Assets.publishing.service.gov.uk*, 2019) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/235985/8490.pdf> accessed 8 September 2019

(*Assets.wwf.org.uk*, 2019) <http://assets.wwf.org.uk/downloads/prestige.pdf> accessed 3 September 2019

(*Iopcfunds.org*, 2019) <https://www.iopcfunds.org/uploads/tx_iopcpublications/Text_of_Conventions_e_01.pdf> accessed 9 September 2019.

'IOPC FUNDS | About Us' (*Iopcfunds.org*, 2019) <https://www.iopcfunds.org/about-us/> accessed 10 September 2019

(*Steamshipmutual.com*, 2019) <https://www.steamshipmutual.com/pdf.htm?id=261798&pdf=true> accessed 10 September 2019

'BBC NEWS | Monitoring | Media Reports | Press Condemns Tanker Disaster' (*News.bbc.co.uk*, 2019) <http://news.bbc.co.uk/2/hi/not_in_website/syndication/monitoring/media_reports/2496101.stm> accessed 4 September 2019

'CLC – The Specialist Property Law Regulator' (*Clc-uk.org*, 2019) <https://www.clc-uk.org/regulation/why-be-regulated-by-the-clc/> accessed 9 September 2019

'Environmental Effects - ITOPF' (*Itopf.org*, 2019) <https://www.itopf.org/knowledge-resources/documents-guides/environmental-effects/> accessed 9 September 2019

'Facilitating The Speedy Payment Of Oil Spill Compensation Claims Under The CLC And Fund Convention (2002) - ITOPF' (*Itopf.org*, 2019) <https://www.itopf.org/knowledge-resources/documents-guides/document/facilitating-the-speedy-payment-of-oil-spill-compensation-claims-under-the-clc-and-fund-convention/> accessed 9 September 2019

'IOPC FUNDS | STOPIA And TOPIA' (*Iopcfunds.org*, 2019) <https://iopcfunds.org/about-us/legal-framework/stopia-and-topia/> accessed 9 September 2019

'International Convention On Civil Liability For Oil Pollution Damage (CLC)' (*Imo.org*, 2019) <http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-on-Civil-Liability-for-Oil-Pollution-Damage-(CLC).aspx> accessed 10 September 2019

'IOPC FUNDS | Home' (*Iopcfunds.org*, 2019) <https://iopcfunds.org/> accessed 7 September 2019

'IOPC FUNDS | Incident Map' (*Iopcfunds.org*, 2019) <https://iopcfunds.org/incidents/incident-map> accessed 4 September 2019

'JAPAN: Oil Spill From 'Aging' Russian Tanker Jolts Japan | Inter Press Service' (*Ipsnews.net*, 2019) <http://www.ipsnews.net/1997/02/japan-oil-spill-from-aging-russian-tanker-jolts-japan/> accessed 6 September 2019

'Statistics - ITOPF' (*Itopf.org*, 2019) <https://www.itopf.org/knowledge-resources/data-statistics/statistics/> accessed 4 September 2019

'STOPIA 2006 (As Amended 2017) And TOPIA 2006 (As Amended 2017) – 2017 Amendments - The Shipowners' Club' (*The Shipowners' Club*, 2019) <https://www.shipownersclub.com/stopia-2006-as-amended-2017-and-topia-2006-as-amended-2017-2017-amendments/> accessed 10 September 2019

'TOPIA 2006 And STOPIA 2006' (*Nepia.com*, 2019) <http://www.nepia.com/news/circulars/topia-2006-and-stopia-2006/> accessed 9 September 2019

'Marine Pollution, Explained' (*Nationalgeographic.com*, 2019) <https://www.nationalgeographic.com/environment/oceans/critical-issues-marine-pollution/> accessed 10 September 2019