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# Oil Pollution Compensation

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## Abbreviations

<b>CLC 1969:</b>	International Convention on Civil Liability for Oil Pollution Damage, 1969
<b>CLC 1992:</b>	International Maritime Organization Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage of 29 November 1969(CLC 1992)
<b>EEZ:</b>	Exclusive Economic Zone
<b>FC 1971:</b>	International Fund for Compensation for Oil Pollution Damage, 1971
<b>FC 1992:</b>	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 18 December 1971(Fund 1992)
<b>FC 2003:</b>	2003 Supplementary Fund Convention
<b>IDI</b>	
<b>IMO:</b>	International Maritime Organization
<b>IMF:</b>	International Monetary Fund
<b>ITOPF:</b>	International Tanker Owners Pollution Federation Ltd
<b>LEG/CONF:</b>	Legal Conference
<b>MARPOL:</b>	Convention...International Convention for the Prevention of Pollution from Ships
<b>OILPOL:</b>	International Convention for the Prevention of Pollution of the Sea by Oil
<b>OPA:</b>	Oil Pollution Act (1990)
<b>SDR:</b>	Special Drawing Right
<b>SOLAS:</b>	International Convention for the Safety of Life at Sea
<b>STCW:</b>	International Convention on Standards of Training, Certification and Watch keeping for Seafarers

## Abstract

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The widespread adverse effects of marine oil contamination resulted in conclusion of several Conventions of which the subjects of their activities vary from prevention to compensation. While the prevention may prove to be the most effective method of combating pollution, pollution incidents are inevitable.

Aiming at compensation of the pollution damage that occurs in marine environment, two international conventions were concluded in 1969 and 1971 which were in fact in response to Torrey Canyon Accident and had clear deficiencies. Aiming at providing higher limits and an enhanced scope of application, the original regime of compensation was amended in 1992 by two Protocols which entered into force in 1996, known as 1992 Civil Liability Compensation and 1992 Fund Convention. Later in 1999, in the wake of Erika Accident another protocol was adopted by the International Maritime Organization (IMO) which provides a high level of compensation for states which are party to it.

The purpose of this work is, in fact, investigation of the original and current regime of compensation. Following this aim, after investigation the provisions of old regime and highlighting the deficiencies the focus would be on substantive provisions of new regime of compensation. For proving the high adverse effects of oil pollutions the sources and effects of oil pollution will be discussed in Part One.

**Key words:** Contamination, Oil Pollution Compensation, Prevention, Original and Current Regime of Compensation.

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## Introduction

Marine pollution occurs by introduction of harmful or potentially harmful effects into the marine environment in three major types: being directly discharged into it; entering it from land-based sources; or being absorbed into it from the atmosphere.<sup>1</sup>

There are lots of marine pollutants<sup>2</sup> that one of the most important one is oil which is a general term representing petroleum products. While oil has many uses<sup>3</sup> it may contaminate the environment through different sources. In fact, law comes to play for resolving the conflict between the requirement for energy and the rejection of oil adverse effects by setting rules for prevention of oil pollution and in the case of contamination, compensating the victims' party. Due to the fact that the major oil producers are not the major oil consumers, a great deal of crude oil has to be transferred by sea for being used or refined in other areas. This results in more 'accidents' and 'operational activities' which are two major sources of oil pollution and their prevention and compensation is the subject of several international Conventions. Prevention may prove to be the most effective method of combating pollution but it is only one aspect of the oil pollution problem because in spite of the progress that has been made in this field, pollution incidents are inevitable. Therefore, compensation plays an equally important role in framing of legislation.

Taking into consideration the fact that the majority of marine oil pollution incidents have foreign elements, there is no doubt that the coordinated way of

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<sup>1</sup>. B. Poulian, *Oil Spills*, 2002, in: <http://library.thinkquest.org>, Access date: 12 January 2008

<sup>2</sup>. A list of Marine Pollutants is available in: <http://www.roadsidehazmat.com/shipping-papers-articles/65-marine-pollutant-list>. Access date: 7 October 2009

<sup>3</sup>. More information available in: [http://en.wikipedia.org/wiki/Petroleum\\_product](http://en.wikipedia.org/wiki/Petroleum_product), Access date: 4 October 2009

compensation is much more effective than national legislation. Prior to Torrey Canyon incident, 1967, there was no international law to compensate the victims of oil pollution and a global need was felt for conclusion of innovative regime of liability and compensation. Aiming at this goal, International Maritime Organization (IMO) came into play, developing and maintaining a widespread regulatory framework for shipping. The result of IMO activities is a comprehensive body of international conventions which can be categorized in three groups:

- 1) Measures aimed at the prevention of accidents<sup>4</sup>
- 2) Rules concerning distress and safety communication<sup>5</sup>
- 3) Conventions establishing compensation and liability regime

All these Conventions aim at balancing the conflicting interests of parties involved and following the goal of seeking a fair and acceptable solution for all. The third category that **the investigation of its provisions is the subject of this dissertation**, in fact, recognizes the theory that those who profit from an activity should bear the risks generated by such an activity. Following this aim this category of Conventions base on the objective fault, offsetting it by the principle of limitation of the amount of liability.

The Torrey Canyon incident in 1967 provided a major stimulus to the development of two voluntary conventions. Original Marine Compensation Conventions, International Convention on Civil Liability for Oil Pollution Damage, 1969, (CLC) and the Convention Establishing the International Fund for

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<sup>4</sup> Key treaties include International Convention for the Safety of Life at Sea, 1974, the International Convention for the Prevention of Pollution from Ships, (MARPOL), 1973, and the International convention on Standards of Training, Certification and Watch keeping for Seafarers 1978

<sup>5</sup> The International Convention on search and rescue and the International Convention on Oil can be mentioned as an example of this category

Compensation for Oil Pollution Damage, 1971, (Fund Convention), came to existence as an answer to the above-mentioned incident.

The interim voluntary agreements of Tanker Owners Voluntary Agreement concerning Liability for Oil Pollution (TOVALOP) and Contract Regarding an Interim Supplement to Tanker Liability for Oil Pollution (CRISTAL)<sup>6</sup> established by the tanker and the oil industries in the aftermath of the Torrey Canyon existed far longer than originally expected but their relevance was progressively eroded as States around the world ratified the equivalent international Conventions. In view of this, both voluntary agreements were terminated on 20 February 1997.

A Diplomatic Conference held in 1984 in London under the auspices of IMO adopted two Protocols amending the Conventions. These Protocols provided higher levels of compensation and a wider scope of application than the original Conventions.

The entry into force conditions laid down in the 1984 Protocol to the 1971 Fund Convention were drafted in such a way that the Protocol could only come into force if the United States of America ratified it. However, in the United

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<sup>6</sup> The compensation scheme known as TOVALOP was conceived in 1968. A sister voluntary oil spill compensation regime CRISTAL (Contract Regarding a Supplement to Tanker Liability of Oil Pollution) for cargo owners was developed in parallel. Both voluntary agreements were designed to be interim arrangements pending the widespread adoption by maritime states of two international conventions developed under the auspices of the International Maritime Organization (the Civil Liability and the Fund Conventions). The administration of TOVALOP was originally ITOPF's prime function and remained an integral part of its activities for more than a quarter of a century. However, the high incidence of major tanker spills in the early 1970s underlined the need for a specialized group to provide technical advice on response techniques and effects. It was also recognized that there would be a requirement to assess objectively the reasonableness of clean-up measures and the merits of claims for compensation under both the voluntary agreements and international conventions. The rapid growth in acceptance by maritime states of the Civil Liability and Fund Conventions and their development through various protocols led to the decision to end TOVALOP and CRISTAL at 20th February, 1997. The then managing director Dr Ian White, together with technical manager Joe Nichols, oversaw the transition of ITOPF to solely providing specialized technical services in the field of marine pollution. More information available in <http://www.itopf.com/about/history/index.html>

States many of the individual states within the country had adopted their own oil pollution liability legislation, and ratification of the Protocols by the United States would have prevented them from maintaining such legislation. This presented political difficulties, which were heightened as a result of the *Exxon Valdez* incident in Alaska in 1989, which gave rise to claims well in excess of the compensation amount available under the 1984 Protocols. The United States subsequently adopted the Oil Pollution Act 1990 (OPA 90), which included its own compensation regime. This ensured that the 1984 Protocols would never enter into force. Hence, the provisions of 1984 will not be discussed in this project.

This original regime was amended in 1992 by two Protocols to provide higher limits and an enhanced scope of application. The amended Conventions, which entered into force on 30 May 1996, are known as the 1992 Civil Liability Convention (1992 CLC) and the 1992 Fund Convention.

After the Erika Accident in 1999, an increase in amount of compensation occurred in all States party to it. This increase in compensation came to play by the International Supplementary Fund for Compensation for Oil Pollution Damage, which is in fact the third level of compensation.

What is going to be discussed here is determining the efficiency of International Compensation Regime by evaluating this three level regime of compensation that such a colorful number of states are parties to. Following this aim, the provisions of these three levels will be investigated analytically

Bearing these issues in mind, this work comprises three Parts:

**First Part** constitutes of two Chapters, investigating Sources and Effects of Marine Oil Pollution. The first Chapter, 'Sources of Marine Oil Pollution' aims

at introducing different sources of oil pollution which can be resulted in more efficient prevention of pollution. Moreover, in this Chapter, where necessary the Prevention Compensations such as the International Convention for the Prevention of Pollution From Ships (MARPOL) and International Convention for the Prevention of Pollution from ship (OILPOL) will be introduced shortly. The second chapter, 'Effects of Marine Oil Pollution', introduces the wide range of effects that oil spill may have emphasizing on its high risk and the necessity of preventing and in the case of occurrence, cleaning up and compensating.

**The Second Part** considers the fact that Oil Spill Compensation has a tortuous nature, after examination of main principles of Tort; the focus would be on investigation of the 'Original Framework of Marine Oil Spill Compensation'. In latter Chapter, the necessity of revising the old regime of compensation will be justified by mentioning the deficiencies of the old regime which was, in fact, an answer to a specific incident.

Finally, in **Part Three** of this work, after mentioning the deficiencies of old regime of compensation, the provisions of the new regime<sup>7</sup> of compensation will be discussed by giving explanations and diagrams. At the end of this Part, the status of countries' membership to oil pollution compensation regime, old and new one, will be examined.

This writer sincerely hopes that the present work will be useful for those who want to be much more familiar with International Oil Pollution Compensation Regime.

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<sup>7</sup>. New regime of compensation includes 1992 Civil Liability Convention, 1992 Fund Convention and 2003 Supplementary Fund Convention

PART **1**

**SOURCES  
AND  
EFFECTS OF MARINE  
OIL POLLUTION**



## Part I

### Sources and Effects of Marine Oil Pollution

According to the United Nation Convention on the Law of the Sea, 1982, (LOSC), marine pollution is defined as: "The introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities."<sup>8</sup>

One of the most important marine pollutants is oil which is a general term used to represent petroleum products, which is a nonrenewable fossil fuel, mainly consist of hydrocarbons. It is the product of a multi- million year geological process in which organic material is transformed in underground reserves. "Crude oils are made up of a wide spectrum of hydrocarbons ranging from very volatile, light materials such as propane and benzene to more complex heavy compounds such as bitumen, aspartames, resins and waxes. Refined products such as petrol or fuel oil are composed of smaller and more specific ranges of these hydrocarbons."<sup>9</sup>

We live in at a time when, on the one hand, we have an indubitable and increasing need for energy that oil is the major source and, on the other hand, we

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<sup>8</sup>. M. Tomczak Jr. *Defining Marine Pollution: A comparison of definition used by international conventions*, Marine Policy, Vol. 8, Issue. 4, Oct. 1984, p. 322

<sup>9</sup>. M. Dubais, *The liability for oil pollution damage*, Journal of Maritime Law and Commerce, V. 3, 1976, p. 75

do not want the pollution that goes with.<sup>10</sup> For resolving the conflict between the requirement for the energy and the rejection of its unpleasant consequences the law, domestic or international, comes into play.<sup>11</sup>

In this chapter, after investigating the sources of oil pollution which studying about them is significant in preventing the pollution of marine environment, the effects of oil pollution will be discussed aiming at highlighting the deep and harmful outcomes of pollution of the marine environment by oil to emphasize the increasing need to stop or at least promote strategies to decrease oil pollution.

## 1. Sources of Oil Pollution

Pollutants reach the marine environment in a number of ways, being directly discharged into it; entering it from land-based sources; or being absorbed into it from the atmosphere. Oil spills happen when people make mistakes or are careless and cause an oil tanker to leak oil into the marine environments. There are a few more ways an oil spill can occur, for example, if the equipment breaks down, the tanker may get stuck on shallow land and in attempts to move it again, they can make put a hole in the tanker causing it to leak oil. When countries are at war, one country may decide to dump gallons of oil into the other country's water.<sup>12</sup>

Terrorists dump oil into a country's water aiming at different goals such as getting the country's attention, or they are trying to make a point to a country. Illegal dumpers also contaminate the marine environments by dumping crude oil

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<sup>10</sup>. Wu Chao, *Pollution from the Carriage of Oil by Sea: Liability and Compensation*, Kluwer Law, 1997, p. 1

<sup>11</sup>. *Idem*.

<sup>12</sup>. B. Poulian, *Oil Spills*, 2002, in: <http://library.thinkquest.org>, Access date: 12 January 2008

into them because they do not want to spend money on breaking up the oil (decomposing it). Natural disasters, like hurricanes and earthquakes, may cause an oil spill, too. They can cause the oil tanker to flip over, pouring oil out.<sup>13</sup>

While it is true that not all sources of oil pollution will be discussed in this part but the most important sources come as follow:

### 1.1. Spill from Land

One of the most common causes of oil spills is actually flowing from the land.<sup>14</sup> After a spill, the majority of the product evaporates and the rest is biodegraded during its journey. In short, dumped oil on the ground sooner or later finds its way into the water supply and contributes to shoreline pollution. However, in Europe and North America, these spills consist of small quantities of oil; some regions of the world are affected on a near permanent basis.<sup>15</sup> Shoreline pollution is constantly marked by oily slicks and tar balls, which when put together, can create localized oil spills. During the 1990s multiple leaks in certain pipelines in the former Union of Soviet Socialist Republics (USSR) reached such an extent that the European Union feared major water pollution in the Baltic Sea.<sup>16</sup>

According to statistics, owing to stricter regulations and greater awareness in industry, these spills has decreased in amount, falling from 2.7 million tones in 1973 to 1.2 million in 1981, and their proportion of all spills from 46% to 36%. The increase in industrial activity caused their input to rise in 1989 to 50%.<sup>17</sup>

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<sup>13</sup>. *Idem*.

<sup>14</sup>. Committee on Understanding Oil Spill Studies, *Oil Spill Causes and Effects*, Routledge, 2006, p 23

<sup>15</sup>. *Ibid.*, at 24

<sup>16</sup>. *Ibid.*, at 25

<sup>17</sup>. *Ibid.*, at 27

## 1.2. Natural Seeps

Natural occurrence of oil and gas at the earth's surface has been of great curiosity and considerable economic interest.<sup>18</sup>

Early geologists learned that seeps generally take place where bituminous, or oil-bearing rocks were exposed at the earth's surface by erosion, or where a fault was present. Almost every major petroleum source in the world has been discovered as a result of surface seepage. Some famous oil seeps, such as the La Brea Tar Pits or the Pitch Lake of Trinidad, were so large that they trapped the people or animals that accidentally came into them.<sup>19</sup>

Oil, tar, and gas seepages are common along the California coastal areas. According to petroleum geologists, good source rock contains about 1% total organic carbon while in California's coastal areas; the source rocks often contain 4-6%, with some zones measuring almost 20% organic carbon. It is not strange then that, where the source rocks with this high amount of carbon are exposed at the surface can make oil pollution by sending the oil out.<sup>20</sup>

## 1.3. Accidental Discharge

Due to the fact that the major oil producers are not the major oil consumers, a great deal of crude oil has to be conveyed by sea for being used or refined in other areas. Growing use of oil has resulted in the increased size and number of tankers used to transfer it which leads to more number of accidents. In 1967, the first major tanker accident, Torrey Canyon, occurred in which over 100,000 tones

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<sup>18</sup>. J. M. Galloway, *Natural Oil and Gas Seepage in the Coastal Areas of California*, 2002, in: <http://www.mms.gov/omm/pacific/enviro/seeps1.htm>, Access date: 8 February 2008.

<sup>19</sup>. *Idem*.

<sup>20</sup>. Elbert R. Wilkinson, *California Offshore Oil and Gas Seeps*, California Summary of Operation. Vol. 57, No. 1, 1971, p. 32