CHAPTER -6

LIABILITY AND COMPENSATION FOR POLLUTION DAMAGE

Pollution of the sea by oil is a problem of national, regional and international concern. It has an irreparable ecological impact on the marine environment unless appropriate and timely steps are taken to prevent, mitigate, control, remove or combat it. Environmental disasters, by their nature, can be devastating, especially in developing and under-developed countries where risk prevention and management is poor and where resources are limited. Prevention and management of these disasters becomes even more significant in a country like India which is surrounded by water on three sides.

The liability following occurrence of vessel source pollution and the compensation of injured parties relating to the states or their private citizens are dealt with in this chapter. The study here relates mainly to the civil liability of private actors. The term liability here thus refers to the conventional regime of civil liability facilitating the compensation of pollution damage victims by private, non state interests, particularly the ship owner and his insurers. This chapter deals with the national laws of India and the international CLC[1] and FUND[2] conventions and its amendments. The relevant civil liability laws in US are also analysed in this study. However, the voluntary compensation schemes developed by the shipping and oil industries are not considered in this inquiry. Chapter also deals with the newly established civil liability regimes relating to pollution caused by hazardous noxious substances and bunker fuels. Lastly, the chapter concludes with the criminal liability regimes recently developed by the European Countries and the comparison between the civil liability and the criminal liability.

Liability and compensation for pollution damage are generally governed by the national laws of the states in whose waters pollution damage is suffered. CLC/FUND regime for oil pollution is widely reflected in the national laws of the key state players except in US. In the US, domestic legislation establishes stricter unilateral regimes of liability and compensation for vessels entering US waters. For most other cases, the

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1. CLC here refers to CLC Convention 69 and its amendments.
2. FUND refers to the FUND convention 71 and its amendments.

international conventions form the governing regime, with resort to national laws being necessary where claims follow the outside ambit of the conventions. In this case, the owner is given the right to restrict his liability to third party claims, including for pollution damage, to a certain maximum amount beyond which he is not responsible.

The liability and compensation laws typically make it mandatory for visiting ships to take out specialized compulsory insurance for pollution damage up to the limitation level. The regimes discussed in this chapter, typically impose primary pollution damage liability on the ship owners. The oil and chemical companies, in their capacity as cargo owners, have succeeded in ensuring that they bear only a secondary liability which arises if and when ship owner's primary liability is unavailable or inadequate to compensate victims. To sum up, there has been a discernible trend to increase the liability of ship owners for pollution damage and the associated compensation payable to victims. This trend has occurred both with the international conventions as well as the unilateral state regimes.

A- National Laws:

In India, The Merchant Shipping Act, 1958 and its amendments deal with the civil liability for the oil pollution damages. However, the Act does not cover the liabilities for pollution damages due to other pollutants like chemicals, any noxious or hazardous liquids.

6.1 Merchant Shipping Act, 1958:

6.1.1 Civil Liability for Oil Pollution damage:

Part XB of the Merchant Shipping Act, 1958 describes in detail about the Civil Liability for Oil Pollution Damage. This Part is applicable to every Indian ship wherever it is, and every foreign ship while it is at a port or place in India or within the territorial waters of India or any marine areas adjacent thereto over which India has, or may hereafter have, exclusive jurisdiction in regard to control of marine pollution under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other maritime zones as per the Maritime Zones Act, 1976 (80 of 1976), or any other law for the time being in force.

The liability of the owner is fixed by this part. The owner at the time of an incident, or, where the incident consists of a series of occurrences, at the time of first of such occurrences, shall be liable for any pollution damage caused by oil which has escaped or been discharged from the ship as a result of the incident.

However, no liability for pollution damage is attached to the owner if he proves that the pollution damage was resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irrespirable character or was caused by an act or omission done with intent to cause such damage by any other person or was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in exercise of its functions in that behalf.

If the owner can prove that the pollution damage was resulted, either wholly or partially, from an act or omission done, with intent to cause such damage, by the person who suffered damage, or from the negligence of that person, the owner shall be exonerated wholly or, as the case may be, partially, from liability to that person. If pollution damage was resulted from escape or discharge of oil from two or more ships, the owners of all such ships are jointly and severally liable for all such damage which is not reasonably separable. As per the Act, no other claim for pollution damage other than those mentioned above shall be made against any owner, his servant or his agent.

The Act also prescribes certain limitation for the liability. The owner may limit his liability in respect of any claims mentioned above to one hundred and thirty-three Special Drawing Rights for each ton of the ship's tonnage or Fourteen Million Special Drawing Rights, whichever is lower. However, where any incident causing pollution damage occurs as a result of the actual fault of the owner, he shall not be entitled to limit his liability.

The exact procedure to be followed for availing the benefit of limiting the liability is provided in the Act. Any owner desiring to avail of the benefit of limitation of his liability has to make an application to the High Court for the constitution of a limitation fund (referred to as fund) and such fund may be constituted either by depositing the sum with the High court or by furnishing bank guarantee or such other security as, in the opinion of the High Court, is satisfactory. The insurer or any other person providing financial security to the owner may apply to the High Court for constitution of the fund, and any fund so constituted shall have the same effect as if it were constituted by the owner. The constitution of the fund shall not prejudice the rights of any claimant against the owner for full compensation exceeding the amount deposited or secured in the fund. The amount in Special Drawing Rights to be deposited or secured in the fund is converted in rupees on the basis of official value in rupees of the Special Drawing Rights as determined by the Reserve Bank of India on the date of constitution of the fund.

Where the owner or any of his servants or agents or any other person providing him insurance or other financial security[3] has paid any compensation to any claimant, such person shall, up to the amount so paid by him, be entitled to acquire by subrogation the rights to which the claimant so compensated would be entitled to. Also where the owner or any other person providing him insurance or other financial security establishes that he may, at a later date, be compelled to pay to any person, in whole or in part, any amount by way of compensation for pollution damage caused by the incident with respect to which he would have been entitled to acquire by subrogation the right of the claimant had the compensation been paid before the fund was distributed, the High Court may order that sufficient amount from the fund may provisionally be set aside to enable the owner or such other person to enforce his claim against the fund at a later date.

The High Court first consolidates all claims against the fund. Any claim in respect of expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimise pollution damage shall rank equally with other claims against the fund. The High Court then distributes the amount in the fund among all claimants in proportion to their established claims.

6.2 Merchant Shipping (Amendment) Act, 2002:

The 2002 amendments made the following changes. As per this, if any liability is alleged to have been incurred by a person in respect of claims arising out of an

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3. Section 352N of M.S Act makes it mandatory for the owner of every Indian ship which carries 2000 tons or more oil in bulk as cargo, in respect of such ship, to maintain an insurance or other financial security for an amount equivalent to "one hundred and thirty-three Special Drawing Rights for each ton of the ships tonnage, or fourteen million Special Drawing Rights,", whichever is lower and the Director General shall issue a certificate in the prescribed form.

occurrence, and legal proceedings are instituted in respect of claims subject to limitation, then such person may apply to the High Court for the setting up of a limitation Fund for the total sum representing the amounts set out in the Convention or the rules made in this behalf under this Part applicable to claims for which that person may be liable together with interest thereon from the date of occurrence giving rise to the liability until the date of the constitution of the Fund.

Further, whenever any person seeks to limit his liability before the Court or seeks to procure the release of a ship or other property or the discharge of any guarantee given within the Indian jurisdiction but any person who, does not have his habitual residence in India or does not have his principal place of business in India or any ship in relation to which the right of limitation is invoked or whose release is sought and which does not at the time specified above fly the Indian Flag is wholly excluded from the provisions of this Part. However, the provisions of this Part are not applicable to the ships intended for navigation on or around coast of India and registered as coastal vessels under the provisions of this Act, and to ships less than three hundred tons.

The amendment further states that when any incident involving two or more ships occurs and pollution damage results there from, the owners of all the ships concerned shall be jointly and severally liable for such damage which is not reasonably separable. Without prejudice to any right of recourse of the owner against third parties, no claim for compensation for pollution damage may be made against the servants or agents of the owner or the members of the crew, the pilot or any other person who, without being a member of the crew, renders services for the ship, any charterer, manager or operator of the ship, any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority, any person taking preventive measures and all servants or agents of persons mentioned above unless the incident causing such damage occurred as a result of their personal act or omission, committed or omitted with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

Under this Part, the owner shall be entitled to limit his liability, in respect of any one or more incident, as may be prescribed. However, the owner shall not be entitled to limit his liability if it is proved that the incident causing pollution damage occurred as a result of his personal act or omission, committed or omitted with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

The new amendment further states that the contributions to the Fund in respect of contributing oil carried by sea to ports or terminal installations in India shall be payable in accordance with Articles 10 and 12 of the Fund Convention[4]. Sub-section (1) shall apply whether or not the contributing oil is imported, and notwithstanding those contributions are payable to the Fund in respect of carriage of the same contributing oil on a previous voyage. Contributions are also payable to the Fund in respect of contributing oil when first received in any installation in India after having been carried by sea and discharged in a port or terminal installation in a country which is not a Fund Convention country. The person liable to pay contributions to the Fund is the importer in case of contributing oil which is being imported into India or in any other case, the person by whom the oil is received in India. If the quantity of contributing oil so imported or received in a year does not exceed one hundred and fifty thousand tonnes or as may be specified from time to time by the Fund Convention, the importer shall not be liable to pay contributions to the Fund in respect of the contributing oil imported or received by him in that year.

Contributions payable by a person to the Fund for any year shall be such amount as may be determined by the Assembly of the Fund under Articles 10 and 12 of the Fund Convention and notified to him by the Fund, and if any amount due from such person remains unpaid after the date on which it became due, it shall from that due date bear interest at a rate determined by the said Assembly until it is paid. The Central Government may require persons, who are or may be liable to pay contributions to the Fund, to give financial security for payment of contributions to that Government or the Fund.

The Central Government has power to call for the names and addresses of the persons who under section 352T are liable to make contributions to the Fund every year and the quantity of contributing oil in respect of which they are so liable, by notice require any

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4. Please see the International Oil Pollution Compensation Fund Convention, 1971 described later.

such person to furnish such information as may be specified therein. This notice may request a person to give such information as may be required to ascertain whether he is liable to contribute to the Fund. The notice also specifies the manner in which, and the time within which, it is to be complied with. In proceedings by the Fund against any person to recover any amount due under section 352T, particulars contained in any list transmitted by the Central Government to the Fund shall, be admissible as evidence of the facts stated in the list; and so far as particulars which are so admissible are based on information given by the person against whom the proceedings are brought, those particulars shall be presumed to be accurate until the contrary is proved.

A person who refuses or willfully neglects to comply with a notice under this section, or makes, any statement which he knows to be false, or recklessly makes any statement which is false, shall be guilty of an offence punishable under this Act.

The Fund is liable for pollution damage in accordance with the provisions of the Fund Convention, if any person suffering pollution damage has been unable to obtain full and adequate compensation for the damage under the terms of the Liability Convention on any of the grounds specified in Article 4 of the Fund Convention.

Any action for a claim against the Fund for compensation under section 352W has to be brought before the High Court. The Fund shall have the right to intervene as a party to any legal proceedings instituted in the High Court against the owner or his guarantor. Where an action for compensation for pollution damage has been brought against the owner or his guarantor before the High Court, each party to the proceedings may notify the Fund of the proceedings. Where such notice of proceedings has been given to the Fund, any judgment given in the proceedings shall, after it has become final and enforceable, become binding upon the Fund in the sense that the facts and evidence in that judgment may not be disputed by the Fund on the ground that it has not intervened in the proceedings.

Notwithstanding anything contained in any other law for the time being in force, no action to enforce a claim against the Fund under this Part shall be entertained by a High

Court in India unless the action to enforce is commenced, or notice of action to enforce a claim against the owner or his guarantor in respect of the same pollution damage is given to the Fund, within three years from the date when the damage occurred provided that in no case an action to enforce a claim shall be brought after six years from the date of the incident that caused such damage.

The section 352Z of the 2002 amendments details about the subrogation rights. It states that if a public authority in India or the Fund has paid any sum as compensation for pollution damage, that authority shall acquire by subrogation any rights which the person so compensated would have enjoyed under the Fund Convention. The Central Government has been invested with powers to make such rules as may be required to carry out the purposes of the Fund Convention.

6.3 The Merchant Shipping (Amendment) Act, 2003:

The new amendments to the M.S Act made the following improvements. As per that if the Director-General based on the report from a surveyor or other person authorized to inspect an oil tanker or other ship under section 356 G, is satisfied that any provision of the Convention has been contravened by any oil tanker or other ship within the coastal waters, the Director-General or any officer authorized by him on his behalf, may detain that ship until the causes of such contravention are removed to the satisfaction of the Director-General or the officer authorized by him; and proceed against that ship for recovery of cost of pollution damage, if any, and the cost of prevention of pollution damage and cleaning of such pollution damage. The Director-General, if found necessary, may request the Indian Navy or the Coast Guard for preventing that ship from proceeding to sea, and the Indian Navy or the Coast Guard, as the case may be, shall take necessary action accordingly.

Further, the Central Government, on receipt of information from the Government of any country that an Indian oil tanker or other ship has contravened any provision of the Convention, may, if it deems it necessary to do so, request such Government to furnish further details of the alleged contravention and if satisfied that sufficient evidence is available to establish contravention of any of the provisions of this Part or the rules made there under, take appropriate action against the owner or master of the concerned oil tanker or other ship. Thereafter, the reporting Government shall be intimated of the action so taken.

6.4 Marine Insurance Act, 1963:

As per section 352 N of the MS Act, it is compulsory for the owner of a ship which carries 2,000 tonness or more of oil to have suitable insurance or some other form of financial guarantee. Marine insurance, under the Act, is basically a contract embodied in a policy. It should be noted that the definition of the term 'contract of marine insurance' under the Marine Insurance Act, 1963 (MI Act) is the same as found in section 1 of the (English) Marine Insurance Act. Under the MI Act, a contract of marine insurance must be embodied in a policy. Otherwise, it is inadmissible in evidence.

The MI Act further provides that, if the contract of marine insurance expressly includes any liability to third parties, the measure of indemnity would be the amount paid or payable by the assured to such third party in respect of such liability. India urgently needs to develop its insurance regime in tune with the rest of the world. For instance, it should be mandatory to include coverage for liabilities to third parties in a contract for maritime insurance.

In its simplest delineation, marine insurance is issued to serve two distinct purposes: to protect the ship owner and to protect others from the actions of the ship owners.

6.4.1 The protection of the ship owner:

As in any business setting, insurance is required to protect against loss to an owner's own property (first party coverage) and to protect against an owner's liability to others (third party coverage). The basic form of first party protection for a ship owner is the Hull policy, while the basic coverage for liabilities is the Protection and Indemnity (P&I) policy. As a result of non ship owners becoming responsible for liabilities, formerly only a threat to ship owners, Maritime Employers' Liability (MEL) Insurance was developed. Currently, in "brown water" situations it has become somewhat commonplace for a vessel owner who also conducts other operations to have in place MEL coverage for all liability it may have as an employer of seamen, with its P&I coverage restricted to non employee claims. Accordingly, the three basic forms of insurance procured by vessel owning interests are Hull, P&I and, particularly in the "oil patch", MEL.

6.4.2 Protection and Indemnity:

P&I insurance cover claims that arise in direct connection with the operation of vessels that are owned, operated, or chartered. Typical coverage will include: personal injury and death claims (including maintenance and repatriation); passenger liability (including luggage); liability for cargo loss and damage (including extra handling costs), collision, wreck removal (where necessitated by law), pollution, loss of property on the insured vessel, damage to fixed and floating objects, towage, and general average.

6.4.3 Maritime Employers Liability coverage:

Primary MEL coverage in the United States is usually written as a package with statutory compensation coverage. As primary compensation coverage must comply with the various compensation statutes, coverage for exposure for compensation (Coverage A) is to whatever limit required by statute. Primary Maritime Coverage B covering maritime 'employers' liability' will have specific limits, usually US$25,000. In consequence, it is common to see requests for excess MEL coverage to protect the assured for its further exposure to claims not covered by compensation.

6.4.4 The Comprehensive General Liability Coverage:

Increasingly significant maritime claims have been the source of litigation involving Comprehensive (and now commercial) General Liability (CGL) policies. It is useful to examine the general structure of the CGL and review several of its more widely used exclusions. Some of these exclusions have been the focus of major insurance disputes, affecting the shipbuilding and ship repair industries and figuring strongly in other marine related litigation.

A contract of marine insurance may, by its express terms, or by usage of trade, be extended so as to protect the assured against losses on inland waters or on any land risk which may be incidental to any sea voyage. Marine Insurance Contract must be embodied in policy.

6.4.5 Warranty of sea worthiness of ship:

In a voyage policy, there is an implied warranty that at the commencement of the voyage the ship shall be seaworthy for the purpose of the particular adventure insured. Where the policy attaches while the ship is in port, there is also an implied warranty that she shall, at the commencement of the risk, be reasonably fit to encounter the ordinary perils of the port. Where the policy relates to a voyage which is performed in different stages, during which the ship requires different kinds of or further preparation or equipment, there is an implied warranty that at the commencement of each stage the ship is seaworthy in respect of such preparation or equipment for the purposes of that stage. A ship is deemed to be seaworthy when she is reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured.

In a time policy there is no implied warranty that the ship shall be seaworthy at any stage of the adventure, but where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness.

6.4.6 Warranty of legality:

There is an implied warranty that the adventure insured is a lawful one, and that, so far as the assured can control the matter, the adventure shall be carried out in a lawful manner.

6.4.7 Included and excluded losses:

Subject to the provisions of this Act, and unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against, but, subject as aforesaid, he is not liable for any loss which is not proximately caused by a peril insured against.

6.4.8 Liabilities to third parties:

Where the assured has effected an insurance in express terms against any liability to a third party, the measure of indemnity, subject to any express provision in the policy, is the amount paid or payable by him to such third party in respect of such liability.

B – International Conventions/Acts/Rules:

6.5 International Convention on Civil Liability for Oil Pollution Damage, 1969:

The Torrey Canyon incident of 1967 revealed a serious gap in the law relating to pollution damage. The difficulties inherent in a claim for compensation during this period were reflective of the way the ship transportation industry was structured and there was great uncertainty as to which jurisdiction or law governed the claims.[5] Hence, the Civil Liability Convention (CLC)[6] was adopted to ensure that adequate compensation is

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5. In re Barracunda Tanker Corp.(Torrey Canyon). 409 F.2d 1013(2d.cir.1969).
6. This Convention adopted by IMO on 29 November, 1969 and in force effect from 19 June, 1975.

available to persons who suffer oil pollution damage resulting from maritime casualties involving ships carrying oil as cargo. The Convention places strict liability on the owner of the ship from which the polluting oil escaped or was discharged causing pollution damage. It is the duty of the owner to prove in each case that any of the exceptions operate. For details, it is worth to refer to of the judgment of case law of Amoco Cadiz.[7]

However, except where the owner has been guilty of actual fault, liability is limited, in respect of any one incident, to 133 Special Drawing Rights (SDR) for each ton of the ship's gross tonnage, with a maximum liability of 14 million SDR (around US$18 million) for each incident. (1 SDR is approximately US$1.28 - exchange rates fluctuate daily). Limitation could be broken if the incident occurred as a result of the owner's actual fault or privity[8]. The Convention requires ships covered by it to maintain insurance or other financial security in sums equivalent to the owner's total liability for one incident and applies to all seagoing vessels actually carrying oil in bulk as cargo. However, only ships carrying more than 2,000 tons of oil are required to maintain insurance in respect of oil pollution damage.

This does not apply to warships or other vessels owned or operated by a State and used for the time being for Government non-commercial service. The Convention, however, applies in respect of the liability and jurisdiction provisions, to ships owned by a State and used for commercial purposes. The only exception as regards to such ships is that they are not required to carry insurance. Instead, they must carry a certificate issued by the appropriate authority of the State of their registry stating that the ship's liability under the Convention is covered.

The Convention covers pollution damage resulting from spills of persistent oils[9] suffered in the territory (including the territorial sea) of a State Party to the Convention. It is applicable to ships which actually carry oil in bulk as cargo that is generally laden tankers. Spills from tankers in ballast or bunker spills from ships other than tankers are

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7. After trials and subsequent appeals the award came up with payment of US$61 million plus interest to the claimants. See In re Oil Spill by Amoco Cadiz,954 F.2d 1279,1992 A.N.C913(7th cir.1992).
8. CLC 69, art. V (2).
9. Persistent oils means Crude oil, Fuel oil, Heavy Diesel oil, Lubricating Oil and whale oil.

not covered, nor is it possible to recover costs when preventive measures are so successful that no actual spill occurs. The ship owner cannot limit liability if the incident occurred as a result of his personal fault.

Under CLC 69, liability was channeled solely to the ship owner. Due to this, claimants as CLC contracting states would be precluded from pursuing alternative remedies against the owner outside of CLC and independently of its limitation provisions. In addition to requiring compulsory insurance, CLC 69 also provided for direct action against the insurer, a right hitherto unavailable under TOVALOP[10]. However, insurer can avoid liability to 3rd parties if the pollution damage had resulted from the owner's willful misconduct. Also the insurer is allowed to limit his liability to the level afforded to the owner under CLC 69. Nevertheless, CLC 69 did not preclude third party claims in excess of limitation figure from being brought under national laws governing direct action against insurers. Under CLC 69, exclusive jurisdiction over compensation claims would be reposed in the courts of a contracting state which suffered the pollution damage[11]. The liability for "pollution damage" would cover losses and damage outside the ship caused by contamination by oil including clean up expenses, the cost of preventive measures and further loss or damage caused by preventive measures. This is an improvement over TOVALOP which covered only governmental clean up and preventive costs. Further, CLC 69 only extended to ship which had to be "actually carrying oil in bulk as cargo" [12]. Hence, all forms of oil pollution emanating from oil tankers would be covered. This included bunker fuel pollution, but only if the tanker was laden with oil cargo at the time of incident. Pollution by oil tankers on ballast voyages excluded. Also pollution from non oil tankers, dry cargo ships, passenger ships, warships or other state owned vessels used, for the time being, only on governmental non-commercial service[13]. Regarding geographical scope, it was decided that only damage caused within the territory or territorial sea could be compensated even if the pollution

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10. TOVALOP was an entirely voluntary agreement entered into by participating tanker owners for the benefit of a 3rd party, i.e., polluted coastal state. It effectively guaranteed the governments that their preventive and clean up expenses following an oil spill would be reimbursed. The scheme was to be administered by ITOPF (International Tanker Owners Pollution Federation) TOVALOP came into effect on 6-10-1969.
11. CLC 69, art. IX (1).
12. CLC 69,. 11(1).
13. CLC 69, art. 1(1).

occurred outside these areas. From an environmental perspective, these were regrettable exemptions, since vessels of all categories typically carried bunker oils and waste bilge oils, all of which cause serious pollution damage. The exclusion of tankers in ballast also made CLC 69, more restrictive than TOVALOP, which covered such tankers. Another problem with CLC 69 was that even if a vessel's flag state is not a party to CLC 69, the vessel must adhere to the compulsory insurance requirement if it wishes to trade with CLC contracting states. This requirement would be enforced by each contracting state against any ship, wherever she is registered, entering or leaving a port in its territory.

6.6 International Oil Pollution Compensation Fund, 1971(1971 Fund Convention):

The 1971 Fund Convention[14] was formed to provide additional compensation for pollution damage beyond what was recoverable from the ship owner under CLC 69.This convention was in fact designed to complement and to dovetail with CLC 69.The two conventions had the same geographical scope, employed the same terminologies and definitions. Both were meant to compensate the same kind of pollution damage claims from persistent oils. The Fund was administered by International Oil Pollution Compensation (IOPC) Fund. The states which were parties to CLC 69 and FUND 71 would enjoy two tiers of compensation in the event of a serious oil spill occurring within their territories or territorial waters. The initial claims will be brought against the ship owner and if adequate compensation can not be recovered fro the ship owner, claims shall be raised against the FUND. The fund would also acquire by subrogation rights any rights which the compensated person may have against the third parties.

The maximum liability of the IOPC fund's liability was limited to 450 million francs per incident (US$ 35 million). This amount is inclusive of the amount paid by the ship owner or his insurer under CLC 69. The fund was constituted by oil receivers in contracting states paying contributions in proportion to the amounts of oil they received by sea. The contributions, however, were limited to oil receivers who in any calendar year received contributing oil exceeding 150,000 tonnes[15]. Two general situations under which the ship owner is exonerated are where defences to liability could be raised and

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14. The International Oil Pollution Compensation Fund 1971, generally referred to as the IOPC Fund 1971 or the 1971 Fund was set up under the 1971 Fund Convention, when the latter entered into force in 1978.
15. FUND 71, art. 10 (1).

where the source of pollution could not be established. The fund was exempted for damage from war, hostilities, civil war or insurrection[16]. However, the fund is liable for pollution damages caused by all natural catastrophes.

6.6.1 The Protocol of 1976:

The Protocol to the CLC, 1969 was adopted on 9th November, 1976 and came into force on 8th April, 1981. The 1969 Civil Liability Convention used the "Poincaré franc", based on the "official" value of gold, as the applicable unit of account. However, experience showed that the conversion of this gold-franc into national currencies was becoming increasingly difficult. The 1976 Protocol, therefore, provides for a new unit of account, based on the Special Drawing Rights (SDR) as used by the International Monetary Fund (IMF). The exchange rate for currencies versus the SDR fluctuates daily. However, in order to cater for those countries which are not members of the IMF and whose laws do not permit the use of the SDR, the Protocol provides for an alternate monetary unit - based, as before, on gold.

6.6.2 The Protocol of 1984:

This Protocol was adopted on 25th May, 1984. While the compensation system established by the 1969 CLC and 1971 Fund Convention had proved very useful, by the mid-1980s, it was generally agreed that the limits of liability were too low to provide adequate compensation in the event of a major pollution incident. The 1984 Protocol set increased limits of liability, but it gradually became clear that the Protocol would never secure the acceptance required for entry into force and it was superseded by the 1992 version.

A major factor in the 1984 Protocol not entering into force was the reluctance of the United States, a major oil importer, to accept the Protocol. The United States preferred a system of unlimited liability, introduced in its Oil Pollution Act of 1990. As a result, the 1992 Protocol was drawn up in such a way that the ratification of the United States was not needed in order to secure entry into force conditions.

6.6.3 The Protocol of 1992:

This Protocol was adopted on 27th November, 1992 and entered into force on 30th May, 1996. The Protocol changed the entry into force requirements by reducing from six

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16. FUND 71 and FUND 92, art. 4 (2).

to four the number of large tanker-owning countries that are needed. The compensation limits remained the same as those originally agreed in 1984:

- For a ship not exceeding 5,000 gross tonnage, liability is limited to 3 million SDR (about US$3.8 million)
- For a ship 5,000 to 140,000 gross tonnage: liability is limited to 3 million SDR plus 420 SDR (about US$538) for each additional unit of tonnage
- For a ship over 140,000 gross tonnage: liability is limited to 59.7 million SDR (about US$76.5 million)

The 1992 protocol also widened the scope of the Convention to cover pollution damage caused in the Exclusive Economic Zone (EEZ) or equivalent area of a State Party. The Protocol covers pollution damage as before but environmental damage compensation is limited to costs incurred for reasonable measures to reinstate the contaminated environment. It also allows expenses incurred for preventive measures to be recovered even when no spill of oil occurs, provided there was grave and imminent threat of pollution damage.

The Protocol also extended the Convention to cover spills from sea-going vessels constructed or adapted to carry oil in bulk as cargo so that it applies to both laden and unladen tankers, including spills of bunker oil from such ships. Under the 1992 Protocol, a ship owner cannot limit liability if it is proved that the pollution damage resulted from the ship owner's personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

From 16th May, 1998, Parties to the 1992 Protocol ceased to be Parties to the 1969 CLC due to a mechanism for compulsory denunciation of the "old" regime established in the 1992 Protocol. However, for some time, the two regimes co-existed, since there are a number of States which are Party to the 1969 CLC and have not yet ratified the 1992 regime - which is intended to eventually replace the 1969 CLC.

The 1992 Protocol allows for States Party to the 1992 Protocol to issue certificates to ships registered in States which are not Party to the 1992 Protocol, so that a ship owner can obtain certificates to both the 1969 and 1992 CLC, even when the ship is registered in a country which has not yet ratified the 1992 Protocol. This is important because a ship which has only a 1969 CLC may find it difficult to trade to a country which has ratified the 1992 Protocol, since it establishes higher limits of liability.

6.6.4 Amendments, 2000:

The 2000 Amendments to the CLC, adopted on 18th October, 2000, entered into force on 1st November, 2003 (under tacit acceptance). The amendments raised the compensation limits by 50 percent compared to the limits set in the 1992 Protocol, as follows:

- For a ship not exceeding 5,000 gross tonnage, the liability is limited to 4.51 million SDR (US$5.78 million) (Under the 1992 Protocol, the limit was 3 million SDR (US$3.8 million)
- For a ship 5,000 to 140,000 gross tonnage: liability is limited to 4.51 million SDR (US$5.78 million) plus 631 SDR (US$807) for each additional gross tonne over 5,000
- (Under the 1992 Protocol, the limit was 3 million SDR (US$3.8 million) plus 420 SDR (US$537.6) for each additional gross tonne)
- For a ship over 140,000 gross tonnage: liability is limited to 89.77 million SDR (US$115 million) (Under the 1992 Protocol, the limit was 59.7 million SDR (US$76.5 million)

6.7 The International Oil Pollution Compensation Fund, 1992:

The **Amoco Cadiz** incident together with the subsequent **Tanio** spill in March 1980, brought out the CLC/FUND regime's inadequacy in dealing with catastrophic oil spills. The main problem was the high inflation rates of the 1970s had severely eroded the real value of the CLC 69 and FUND 71 limits. Also the US decision to proceed unilaterally with OPA-90 threw doubts on the inter-governmental liability and compensation regimes. Thereafter, IMO was pressurised to make amendments to both the conventions. This 'old' regime was amended in 1992 by two Protocols, and the amended Conventions are known as the 1992 Civil Liability Convention and the 1992 Fund Convention. The 1992 Conventions entered into force on 30th May, 1996. Due to a number of recent denunciations of the 1971 Fund Convention, this Convention ceased to be in force on 24th May, 2002. A large number of States have also denounced the 1969 Civil Liability

Convention. Therefore, this study deals primarily with the 'new regime', that is, the 1992 Civil Liability Convention and the 1992 Fund Convention.

The 1992 Civil Liability Convention governs the liability of ship owners for oil pollution damage. The Convention lays down the principle of strict liability for ship owners and creates a system of compulsory liability insurance. The ship owner is normally entitled to limit his liability to an amount which is linked to the tonnage of his ship. The 1992 Fund Convention, which is supplementary to the 1992 Civil Liability Convention, establishes a regime for compensating victims when the compensation under the applicable Civil Liability Convention is inadequate.

The International Oil Pollution Compensation Fund 1992, generally referred to as the IOPC Fund 1992 or the 1992 Fund, was set up under the 1992 Fund Convention. The 1992 Fund is a worldwide intergovernmental organization[17] established for the purpose of administering the regime of compensation created by the 1992 Fund Convention. By becoming Party to the 1992 Fund Convention, a State becomes a Member of the 1992 Fund. The Organization has its headquarters in London.

In response to the **Erika** incident in December, 1999, due to the pressure from France and European Commission, in October, 2000, IMO adopted amendments to increase the maximum limits by 50.37 per cent [18]. This increased the maximum amount of compensation available under CLC 92 from 59.7 million SDRs to 89.77 million SDRs (US$123 million). For ships of less than 5000 gross tons, CLC limit was raised to 4.5 million SDRs. Total amount of compensation available under CLC 92 was thus raised from 135 million to 203 million SDRs (US $273 million). Also proposal was made for a 3rd tier of liability for pollution damage amounting to EUR 1 billion[19]. COPE (Fund for compensation of oil pollution damage in European waters) was conceived as a "top-up" fund in the event that the FUND 92 become breached. The European states were still concerned about the high inflation that existed and even doubted whether the 50.37 per

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17. As on 1st February, 2004, 94 States had ratified the 1992 Civil Liability Convention, and 86 States had ratified the 1992 Fund Convention.
18. See CLC 92, art.15, final clauses and FUND 92, art. 33, final clauses.
19. See proposal for Erika II package.

cent increase in maximum limit will be adequate enough to cover any major incident.

6.8 International Oil Pollution Compensation Supplementary Fund:

Additional compensation is likely to be available in future for victims of oil pollution from oil tanker accidents, following the adoption of a Protocol establishing an International Oil Pollution Compensation Supplementary Fund. The Protocol was adopted by a Diplomatic Conference held at the Headquarters of the International Maritime Organization (IMO) in London in May, 2003. The aim of the Supplementary Fund is to supplement the compensation available under the 1992 Civil Liability and Fund Conventions with an additional third tier of compensation. Membership of the Supplementary Fund is optional and any State which is a Member of the 1992 Fund may join the Supplementary Fund. The Supplementary Fund has an amount of 547 million SDR (US$ 810 million), in addition to the amount of 203 million SDR (US$ 300 million) which is available in the present 1992 Fund after the increase which took effect on 1st November, 2003. As a result, the total amount available for compensation for each incident in the States which are Members of the Supplementary Fund will be 750 million SDR (US$ 1 110 million). One important effect of the Protocol will be that, in practically all cases, it will be possible to pay compensation at 100 percent of the amount of the damage agreed between the Fund and the victim. It will also avoid the need to fix the level of payment below 100 percent of the amount of the damage suffered during the early stages of most major incidents as has been the case in respect of several recent incidents.

The Protocol has entered into force three months after it has been ratified by at least eight States which have received a combined total of 450 million tons of contributing oil in a calendar year. The Supplementary Fund will only pay compensation for pollution damage in States which are Members of the Supplementary Fund for incidents which occur after the Protocol has entered into force.

The Supplementary Fund Protocol entered into force on 3rd March, 2005 following ratification by France, Ireland, Spain, Norway, Finland, Japan, Denmark and Germany.

Table – 6.1 Maximum Amounts of Compensation Available under the Conventions (Expressed In US$ Millions - rates as on January, 2005)

Tanker's Gross Tonnage	1969 CLC	1992 CLC (post-Nov 2003)	1992 Fund (post-Nov 2003)	Supplementary Fund
5,000	1.0	7.0	313.7	1158.9
25,000	5.2	26.4	313.7	1158.9
50,000	10.3	43.8	313.7	1158.9
100,000	20.5	99.6	313.7	1158.9
140,000	21.6	138.7	313.7	1158.9

Note: The limits of liability under the various regimes are based on specified units of account (Special Drawing Right - SDR). The value of an SDR in terms of a national currency varies. For the purpose of this composition all the limits are expressed in US dollars, based on a rate of exchange of 1 SDR=US $ 1.54 (January, 2005). The maximum amount of compensation potentially available under each of the various regimes is, in many cases, inclusive of amounts that would be payable under another regime. For example, the maximum amount of compensation available under the 1992 Fund Convention is inclusive of compensation payable by the tanker owner under the 1992 CLC. The maximum amounts listed above should, therefore, not be aggregated when determining the total amount of compensation which may be available in a specific incident.

6.9 Oil spill compensation in countries which have not ratified the international Conventions:

Some countries which have not ratified the international compensation Conventions have their own domestic legislation for compensating those affected by oil spills from tankers. Some of these may be highly specific, such as the Oil Pollution Act of 1990 in the USA, whereas other countries may rely on broader laws originally developed for other purposes.

6.9.1 Liability and Compensation in United States - Oil Pollution Act, 1990:

Though the United States had signed the CLC 69 and FUND 71 conventions, subsequently, they refused to ratify both the instruments as the liability limits prescribed by those instruments were too low. Till the enactment of OIL POL-90, oil spill liability and compensation in US remained governed by several federal statutes. The heavy oil spillage caused by the US registered tanker the **Exxon Valdez** on 24th March, 1989 pressurised the US to enact OIL POL- 90. OIL POL-90 imposed secondary liability on cargo owners in the form of contributions to an OIL Spill Liability Trust Fund[20]. OIL

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20. The fund is administered by the National Pollution Board's Centre.

POL-90 entered into force on 18th August, 1990. Immediately after that various states enacted their own national laws. The International group of P&I Clubs expressed concerns over the insurance market's capacity to absorb the higher liability limits under OPA-90 and the various state laws. The P&I Clubs accordingly amended their terms and conditions of entry and introduced various exclusion clauses. This effectively excluded all pollution claims relating to oil pollution in US waters. Those who did not wanted the exclusion clauses had to pay heavily on premium. Another concern of OPA-90 was the requirement of Certificates of Financial Responsibility (COFRs). Under the Act, the ship owner and his insurer have to become guarantors for all claimants under the Act for unlimited amounts.

Another important thing observed was that the response of the oil companies to OPA-90 was very instructive and they started adopting various innovative schemes to avoid the liability under the draconian provisions of the Act. Several oil companies sold their tankers and resorted to chartering instead, thereby avoiding primary liability as owners.[21]

As per the Act, the ship owners have to enter into contract with clean up companies, employing spill management teams and carrying onboard pollution response equipment. High criminal and administrative penalties imposed by the Act were another problems faced by the ship owners.

OPA-90 did not fully repeal existing Federal legislation and case law. These laws together with the vast array of state legislation permitted by OPA-90, still present a formidable challenge to any ship operator wishing to fully understand the US regulatory system. No doubt, the Act led to higher operating costs and stringent operational and CDEM requirements such as double hulls on vessels entering US waters. However, measures taken through the Act had led to decline in sub-standard vessels operating to US, and reported reduction in the amount of oil spilled into US waters[22]. Because of

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21. Many charterers have forgotten the fact they still can be sued by the ship owners in a recourse action to an unlimited amount, see Aegean Sea Traders Corp.(Aegean Sea) v. Repsol Petroleo S.A.,[1998],Lloyd's Rep.39.
22. The average annual spill of oil declined from 6.3 million gallons for the period 1986-1990 to 0.9 million gallons for the period 1991-1995, see Maritime Administration and Coast Guard, Maritime Trade and Transportation, 1999 at 63 (C.Moore. ed.,1999).

strictness in US waters, the operation of the sub standard vessels shifted to developing countries. OPA-90 failed to address the root causes of substandard shipping and the lack of incentives to use only quality vessels and to provide adequate maintenance and training.

6.10 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious substances by Sea (HNS Convention), 1996:

The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious substances by Sea (HNS Convention) was adopted by the IMO in May, 1996. It aims to ensure adequate, prompt and effective compensation for damage that may result from shipping accidents involving hazardous and noxious substances. The Successful adoption of the HNS convention represented a pro-active regulatory effort on IMO's part given that it was adopted before any catastrophic HNS incident had occurred.

The Convention entitles claimants to compensation for loss or damage to persons, property and the environment caused by incidents involving cargoes of oil, gases and chemicals, plus other substances which are hazardous in packaged form. Pollution damage caused by persistent oils already covered by the CLC and Fund Convention is excluded, as is damage caused by radioactive materials and coal.

The HNS Convention is modelled on the CLC and Fund Convention. Thus, the ship owner (and his P&I insurer) is strictly liable to pay the first tier of compensation whereas the second tier comes from a fund levied on cargo receivers in all Contracting States on a post-event basis. Ship owner liability ranges from SDR 10 million (about US$ 15 million) for ships up to 2,000 GT, rising linearly through SDR 82 million (about US$ 126 million) for ships of 50,000 GT, to a maximum of SDR 100 million (about US$ 154 million) for ships over 100,000 GT. It is compulsory for all ships over 200 GT to have insurance to cover the relevant amount.

The HNS Fund provides compensation up to a total of SDR 250 million (US$ 385 million), inclusive of ship owner liability but irrespective of ship size. The HNS Fund will comprise four separate accounts for oil, LPG, LNG and a general account for other HNS substances such as bulk solids and chemicals. Each separate account will meet claims attributable to the relevant cargo without cross subsidisation and will be funded in proportion to total receipts of relevant cargoes in Contributing States. In addition to compensating for pollution damage caused by HNS, the convention also extends to non pollutions damage resulting from incidents such as fires or explosions. Coal, fish meal, wood chip and other high volume, low hazard solid substances are excluded from HNSC.

As on 30th November, 2004, the HNS Convention had only been ratified by Angola, Morocco, the Russian Federation, St Kitts and Nevis, Samoa, Slovenia and Tonga.

6.11 International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001:

The lack of a comprehensive liability and compensation regime makes it more difficult to deal with bunker oil spills from ships that are not oil tankers. Some bulk carriers and container ships carry more oil as bunker oil than coastal tankers carry as cargo. Bunker oils carried by large commercial ships are normally heavy fuel oils that are highly persistent and viscous when spilled. Such oils have the potential to travel great distances from the original spill location, causing widespread contamination of coast lines. Heavy fuel oils are generally not amenable to many of the clean-up techniques normally employed to deal with floating oil. As a consequence, the clean-up of heavy fuel oil spills can extend over large areas and be extremely costly.

Recognition of the problems that can be caused by spills of heavy bunker fuel from non-tankers led to the adoption of the International Convention on Civil Liability for Bunker Oil Pollution Damage at a Diplomatic Conference in March, 2001.

Implementation of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunkers Convention) will ensure that clean-up and response costs are recoverable from all ship owners without difficulty. In establishing a liability and compensation regime for bunker oil spills from ships that are not oil tankers, the Bunkers Convention provides that the ship owner is strictly liable for pollution damages resulting from a spill of bunker oil and the ship owner is able to limit liability under any applicable national or international regime. Further, the registered owners of ships having a gross tonnage greater than 1,000 are required to maintain insurance to cover their liabilities, and that the claims for pollution damage may be brought directly against the insurer.

The Bunkers Convention does not impose unlimited liability on a ship owner in the case of pollution damage resulting from a spill of bunker oil. Ship owners and insurers are able to limit their liability under any applicable national or international regime.

This IMO Convention seeks to ensure that adequate compensation is promptly available to persons who are required to clean up or who suffer damage as a result of spills of ships' bunker oil, who would not otherwise be compensated under the 1992 CLC. Although strict liability under the Bunker Spills Convention extends beyond the registered owner to the bareboat charterer, manager and operator of the ship, the Convention only requires the registered owner of ships greater than 1,000 GT to maintain insurance or other financial security. The level of cover must be equal to the limits of liability under the applicable national or international limitation regime, but in no case exceeding the amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

6.12 Criminal Liability for vessel source pollution:

Prior to the grounding of the **"Exxon Valdez"**, mariners never dreamed of criminal penalties resulting from maritime accidents caused by errors of navigation or management of a vessel. The criminal prosecution of Captain Hazelwood, Exxon Shipping Company and Exxon Corporation changed all of that.

There are two categories of statutes imposing criminal liability arising from ship collisions and groundings. First, if there is pollution incidental to a maritime accident, criminal liability for violation of state and federal environmental statutes may be imposed. Second, regardless of whether there is pollution, state and federal general criminal statutes imposing criminal liability for damage to property, personal injury and loss of life will come into play. It is logical that in a criminal investigation of a maritime accident the focus of criminal liability under either of these categories will first be on the crew members, then on the corporation, and ultimately on corporate officers.

Depending on the circumstances, the crew members navigating and controlling the vessel could bear criminal liability for their actions under both environmental statues and general criminal statutes. For example, in the **"Exxon Valdez"** grounding, Captain Hazelwood was charged under environmental statutes for the negligent discharge of oil, as well as under general criminal statutes for criminal mischief, reckless endangerment and operating a vessel while intoxicated. In addition, the ship owner corporation may be held vicariously liable for the acts of crew members acting within the scope of their employment if such acts constitute a violation of environmental statutes and, under certain circumstances, general criminal statutes. Additionally, corporate officers can be held criminally liable under environmental statutes merely because of their position of responsibility in the company, regardless of their actual knowledge or participation in any culpable conduct. Finally, corporate officers can be held criminally liable for violation of general criminal statutes depending on their actual knowledge of the facts surrounding the accident and whether committed acts contributing to the accident.

6.13 The Relationship between Criminal Liability and Civil Liability:

It is also important to consider the relationship between criminal liability and civil liability in a maritime accident situation. Initially, we can assume that in every major maritime accident where there is an oil spill and an environmental impact there will also be a deluge of civil cases against the ship owner and crew members for damages based on negligence, and punitive damages based on willful or reckless conduct.

Nearly all of the issues which could later be the basis for huge civil recoveries will be the same issues involved in most criminal prosecutions arising out of the same accident. Thus, since a criminal case will invariably be tried before the corresponding civil case, it is very important to preserve the viability of a civil defense by defending vigorously any criminal prosecution of the crew, corporation or corporate officers arising out of a maritime accident.

In practical terms, this means that long before the civil case even gets into serious discovery, the issues relating to negligence, recklessness and the specific facts regarding what happened will have already been determined by a court and jury. For instance, a finding of guilt based on recklessness or negligence, because it is a finding beyond a reasonable doubt, could be introduced as a final determination of that issue in a subsequent civil trial. In other words, a party's civil liability, including liability for punitive damages, can for all intents and purposes be decided by a criminal conviction arising out of the same incident dealing with the same issues and parties. In order to understand in depth the criminal liabilities imposed on the officers of a ship and on the owner, the following case laws collected from the department of justice, United Nations may be studied. It may be seen that in some of the cases, the trial is not completed.

6.14 Case laws related to criminal liability imposed on the officers of the ship and on the owner:

Case law No:1 United States v. Stickle, et al.,
355 F. Supp. 2d 1317(S.D. Fla.), aff'd, 454 F. 3d 1265, (11th Cir. 2006)

In the subject case, 442 MT of wheat cargo contaminated with diesel oil was dumped into sea by the vessel. Also, the ship's staff and the owner obstructed Federal investigations. The Chairman, President, Marine Superintendent, Captain and Chief Officer of the ship was convicted and Chairman/CEO sentenced to 33 months incarceration and a fine of $156,000 was imposed on the vessel. Court of Appeals rejected legal challenges to APPS.

Case law No:2 United States v. Overseas Shipholding Group, Inc. (M.T.Pacific Ruby):
Case 1:06-cr-00065-TH Document 97, Filed on 10/04/2006

The subject company was fined to pay $37 million and plead guilty to 33 felony counts for illegally dumping waste oil near six US ports, according to Massachusetts prosecutors. $37 million penalty imposed on OS group is the largest ever criminal penalty involving deliberate pollution from a vessel. The US department of justice said that 9 ships of OS group illegally released oily waste and sludge into the ocean off the coasts of New England, North Carolina and other areas. The penalty includes a $ 27.8 million criminal fine and a $9.2 million community service payment that will fund various marine environmental projects nation wide.

Case Law No:3 United States v. Ionia Management S.A.,(M.T.Kriton):
Case No.3.07 cr 134(JBA)

On 6th September 2007, following a two week trial, a jury convicted defendant Ionia Management S.A., of thirteen APPS counts, two counts of falsifying records in a federal investigation, one count of obstruction, and one count of conspiring to violate APPS, falsifying records and obstruct justice. The evidence at trial established that the defendant was engaged in both deliberate and large scale pollution and the attendant extensive falsification of its Oil Record Books. At the time of violations, company was on probation for earlier APPS violations.

Case Law No: 4 United States v. Trojan Clipper:

On 15th June, 2006, Chief Engineer of Danish owned ocean going chemical tanker M.T. Trojan Clipper pleaded guilty to charges of presenting false document to coast guard and attempting to obstruct an inspection to cover up the ship's overboard discharges of oil sludge and oil contaminated bilge waste. The chief engineer faces a statutory maximum prison sentence on each count of 5 years and a statutory maximum fine of $ 250,000 per count.

Case Law No:5 United States v. Fleet Management co., Hongkong:

On 23rd January, 2007, Chief Engineer of "Valparaiso Star", a Liberian flagged vessel belonging to M/s Fleet Management Co., Hong kong, discharged oil contaminated sludge into ocean. Further, the Chief Engineer, Chief Officer and the Master of the said vessel falsified the records to cover up the issue. The USCG has taken up the case and the same is pending trial.

Case Law No: 6 United States v. Athenian Sea Carriers. et. all:

On 14th December, 2006, the Chief Engineer and the First Engineer of a motor tanker "Captain XKyriakou", registered in Marshall Islands, owned by a Liberian company and operated by a Greek company, were indicted on one count of violating the United States APPS from ship's by falsifying ship's Oil Record Book. USCG's inspection revealed that the ship by passed the pollution control equipment and allowed ship's sludge and oily bilge water to go directly overboard. The case is going on.

Case Law No:7 United States v. National Navigation Co.(M.V Wadi Al Arish):
Report published by US Department of Justice: ENRD(202) 514-2007 TDD(202) 514-1888, dated: 29-4-08

On 29th April, 2008, M/s National Navigation Company pleaded guilty and was sentenced for 15 felony charges. The subject company, based in Cairo, Egypt, admitted to violating the APPS and making statements to Federal officials. Court sentenced NNC to pay a total monetary penalty of $7.25 million.

6.15 Analysis of the Liability and Compensation regimes:

a) At the international level:

The CLC/FUND, HNSC and Bunker convention regimes were created for having a uniform international system providing incentives for compliance with standardized rules. This guarantees the consolidation of the pollution claims under one jurisdiction, the ease of administering limitation funds and the mutual recognition of enforcement of judgments in all contracting states. As far as the oil spill victims are concerned, the regimes guarantee prompt and adequate compensation with direct action against the insurers. The main advantage is that the claims can be brought in the courts of the victims' own countries without their having to pursue the ship owner elsewhere.

The regimes also render it unnecessary for the claimants to bear the expenses of arresting the vessels and enforcing judgments following spill incidents. This gives an advantage to the ship owners also who can avoid delays to their trading schedules. Since the regimes are based on the application of strict liability, this allows for the early and amicable settlement of cases, saving time and money. The operation of IOPC Fund or the HNS Fund, as the case may be, makes the claim settlement faster, without going to a court. To sum up, features such as strict liability, limitation fund, compulsory insurance, direct action against insurers and cargo financed supplemental fund have all benefited the pollution victims immensely.

As seen earlier, CLC 69 and FUND 71 regimes were weak. However, 1992 amendments have redressed almost all defects which CLC/FUND regimes earlier had; except for the continued non exemption of non persistent oils as such oils are also capable of causing serious damage to the marine environment. The exemption of unidentified operational spills also causes a serious concern for coastal states as such incidents remain major sources of pollution.

Since the channeling of liability had narrowed down to ship owner, the joint and several liability can not be imposed on other parties who may be equally responsible for pollution incidents. In fact, the civil liability should be imposed on the charterers also for using sub-standard ships. Therefore, the CLC/FUND, HNSC and Bunker convention regimes which are originally meant for compensation purposes are to be redesigned to promote deterrence, behavioural change and incentives for compliance. Quality shipping can be brought in only when there is a widely distributed burden- sharing regime existing both for the pollution control equipment and liability for claims.

After the '**Erika**' and '**Prestige**' incidents, the European Commission felt that the current focus of the regime is too much on the compensation of the victims rather than fixing the liability on the actual polluter. It is, therefore, felt that in the forthcoming revisions of CLC/FUND conventions, the present system of chanalising the liability only on to the ship owner should be amended and the other actors in the shipping business such as charterers and ship managers should also be penalised, particularly when sub-standard vessels are implicated.

It was also seen that the liability and compensation regimes have also had significant cost impact on the ship owning, insurance and cargo owning industries. With the increasing trends in environmental concerns in the developed states and the growing invocation of the polluter pays principle, it is likely that greater costs will progressively imposed on the shipping industry. Besides, if liabilities are imposed on non-ship owning interests, it is likely to provide greater incentives to these actors to promote the use of well maintained and quality ships and to suppress the market for the sub-standard ships.

b) At the national level:

It is seen from the MS Act that the liability covered is only for the oil pollution damages. There is no regime existing for the HNS and bunker oil spills. Also, ships of less than 300 dwt., government owned vessels and coastal vessels are exempted by the Act. The compensation given for the pollution victims is through the High court and the procedure is very cumbersome. A time limitation of 3 years for filing for the compensation is given in the Act. The claim amount is also limited to 130 SDRs for each ton of ship's tonnage or 14 million SDRs whichever is lower. When compared to the regimes imposed by the international conventions, it is felt that it is high time that India should revise the existing regimes to catch up with the world.
