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# INTERNATIONAL ENVIRONMENTAL LAW: International Conventions Concerning Oil Pollution At Sea

*Thomas A. Mensah\**

## I. INTRODUCTION

**I**N RECENT TIMES OIL, and particularly hydrocarbon oil, has emerged as one of the most notorious sources of marine pollution. As a result, oil pollution has attracted the attention of national and international movements and organizations concerned with preventing environmental pollution. This focus of attention and efforts on oil pollution of the sea is, in part, due to incidents of marine oil pollution that tend generally to produce rather dramatic results which often attract national and international publicity. This growing concern of experts, politicians and laymen alike, with the problem of oil pollution is also a direct result of the unprecedented increase in the production, transportation and use of oil and oil-derived substances during the last two decades. With more oil being produced and transported over long distances by sea, with the increase in the number of ships relying on oil for their operation, and with an almost dramatic increase in the size and number of ships carrying oil in bulk and the world-wide development of deep sea drilling for oil, the risk of pollution from accidents in production and transportation of oil has increased and continues to increase.<sup>1</sup> But, even excluding accidents, past experience has shown that considerable pollution of the seas, well above acceptable levels, can result from deliberate discharges of oil from ships.<sup>2</sup> These dis-

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The views expressed herein are attributable solely to the author and do not in any way purport to represent the views or position of IMCO or its Secretariat.

<sup>1</sup> See P. Marstrand, *Pollution of the Seas*, MCKNIGHT, MARSTRAND AND SINCLAIR, ENVIRONMENTAL POLLUTION CONTROL (1974). See also O. Schachter and D. Serwer, *Marine Pollution Problems and Remedies*, 65 AM. J. INT'L L. 84 (1971); M. Hardy, *International Control of Marine Pollution*, 11 NAT. RES. J. 296 (1971).

<sup>2</sup> See R. Sanbrook and A. Yurchyshun, *Marine Pollution from Vessels*, CRITICAL ENVIRONMENTAL ISSUES ON THE LAW OF THE SEA — A REPORT OF THE INTERNATIONAL INSTITUTE FOR ENVIRONMENT AND DEVELOPMENT (1975); R. Hallman, *Towards*

charges, sometimes misleadingly described as "operational discharges," have in the past caused serious pollution to beaches and to other areas of the sea, and have caused much concern and agitation at the national and international levels.

While the danger of marine pollution from shipborne oils may vary from place to place and the awareness of such danger and the exertion of efforts to deal with it may also vary from state to state, there is general agreement that the problem can be dealt with effectively only if tackled on an international basis. There are many reasons for this. In the first place, pollution of the sea by shipborne oil is only a side effect of international production of, and commerce in, oils. The ships which transport oil belong not to one state, or only a few states, but to a large number of sovereign states. No regime can apply to all or most of these ships unless it involves a reasonably large number of states. In the second place, pollution of the seas cannot, by its very nature, be localized to areas within the field of control or interest of one state or even a few states. What takes place in a marine area of jurisdiction of one state may eventually spread to areas within the jurisdiction of other states; and pollution which takes place on the high seas may yet affect other waters within a rather short time. The sea binds the continents and countries of the world together so closely that the question of pollution cannot be left to the individual wishes and capabilities of states; the problem is such that no state can deal with it on its own.<sup>3</sup>

Moreover, there has, in recent times, been an increasing recognition that concern for the marine environment must transcend narrow individual national interests to include concern for those areas of the seas which do not fall within the jurisdiction of any states. Since pollution and its effects cannot be confined to particular areas, there is now general recognition of the inseparability of man's environment and of man's increasing dependence on the seas in preserving the "ecological balance" of the whole of the human environment. States, international organizations, national and international movements and many individuals have concluded that the seas and oceans should be preserved and kept unpolluted in their entirety if any nation or group of nations is to be effectively protected from the serious effects of marine pollution. All have agreed that the preservation of the world's seas and oceans re-

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*an Environmentally Sound Law of the Sea, A REPORT OF THE INTERNATIONAL INSTITUTE FOR ENVIRONMENT AND DEVELOPMENT, at 40-41, 60-67 (1974).*

<sup>3</sup> "Very few marine pollution problems can be considered matters of exclusively local interest." O. Schachter and D. Serwer, *supra* note 1, at 84.

quires a comprehensive program, adopted and implemented through interdisciplinary cooperation, based on international agreement and accommodation and involving a combination of diverse measures which have to be sustained, reviewed and improved upon from time to time to meet developing needs.<sup>4</sup>

One of the areas in which international cooperation is necessary is the legal field; and the international community has, accordingly, given considerable attention to devising necessary and feasible measures for ensuring effective protection of the seas. Great emphasis has been placed on the protection of the seas from pollution by oil — especially oil carried in or used by ships. Although the initial concentration of attention and effort on oil has given way to a more balanced and comprehensive approach, it is undeniable that more work has been done in relation to marine pollution from oil than has been done in relation to any other source of pollution — whether it be pollution of the sea or pollution in other sectors of the environment.

The measures taken in the legal field have been aimed at four main objectives:

1. To prevent or minimize intentional discharges of oil from ships, i.e., discharges of oil arising from what used to be regarded as "routine" operations of ships such as tank cleaning, deballasting, etc.
2. Preventing accidents which may result in the escape or discharge of oil into the sea, thereby causing pollution.
3. Establishing arrangements and procedures for dealing with pollution or the threat of pollution arising as a result of accidents; and,
4. Establishing a regime and procedures for assigning liability for damage suffered as a result of pollution and ensuring that victims of such damage will be able to obtain compensation for the damage suffered by them.

To be efficacious (and even credible) any measures aimed at the above objectives must be accepted and applied on a broadly uniform basis by as many states as possible. Although the required measures can be, and in many cases have been, taken by individual states, there is general agreement on the need to have them taken also on the international plane. Accordingly, recourse has been

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<sup>4</sup> "The marine environment and all the living organisms which it supports are of vital importance to humanity and all people have an interest in assuring that this environment is so managed that its quality and resources are not impaired." From the Declaration on the Human Environment — G.A. Res. 2882, 26 U.N. GAOR Supp. 29, at 38, U.N. Doc. A/18429 (48/14); Text in 11 INT'L LEGAL MATERIALS, 432 (1972).

had, whenever possible, to international conventions or similar treaty instruments as the means of obtaining the widest possible acceptance of uniform rules and regulations which shipowners, ship operators and other dealers in oil must follow in order to prevent and control the oil pollution of the seas.

Because the measures necessary to achieve the objectives listed are many and varied, requiring contributions from a large number of disciplines, professions and concerns, the conventions and instruments in this field cannot be regarded as mere legal instruments. For, while the form of a particular instrument will be clearly "legal," the substantive issues dealt with therein may be mainly technical and the implementation of the regulations or norms contained in the instrument may require more technical than legal expertise. What these conventions and instruments do is to enable states to impose on each other and accept the obligation to take measures and procedures — technical, administrative, economic, legislative — designed to promote concerted effort to preserve the seas from pollution at the national and international levels.

## II. CONVENTIONS FOR THE PREVENTION OF OPERATIONAL DISCHARGES OF OIL INTO THE SEA

Conventions and instruments adopted primarily with the aim of preventing or controlling discharges of oil from ships arising from the routine operation of ships include the following:

(A) The International Convention for the Prevention of Pollution of the Sea by Oil, 1954, with its 1962 Amendments.

(B) Amendments to the 1954/62 Convention adopted in 1969 and 1971.

(C) International Convention for the Prevention of Pollution from Ships, 1973.

### *The International Convention for the Prevention of Pollution of the Sea by Oil, 1954*

The first major step towards the international control of marine pollution by oil was taken in 1954. Following a discussion in the Economic and Social Council of the United Nations in 1950 of the increasing incidence of oil pollution from ships, the Government of the United Kingdom agreed to convene and host a diplomatic conference to consider and adopt a convention to deal with the problem of oil pollution from ship discharges. The Conference on Pollution of the Sea by Oil, held in London from 26 April to 12

May 1954, adopted the International Convention for the Prevention of Pollution of the Sea by Oil.<sup>5</sup>

The principal aim of this Convention, which has justly been described as "the first multilateral instrument to be concluded with the prime objective of protecting the environment,"<sup>6</sup> was the protection of coastal amenities from pollution by oil discharged from ships. The Convention established certain "prohibited zones" or areas of the seas within which the discharge of oil or oily mixtures by tankers was prohibited, subject to a few well-defined exceptions.<sup>7</sup> The Convention then stipulated that any contravention of its prohibitions by a ship "shall be an offence punishable under the laws of the territory in which the ship is registered."<sup>8</sup> Furthermore, it provided that the penalties to be imposed in respect to contraventions outside territorial waters shall be "not less than" the penalties imposed in respect to unlawful discharges of oil in territorial waters of the states concerned.<sup>9</sup> The Convention also provided that ships within its jurisdiction "shall be required to be fitted so as to prevent the escape of fuel oil or heavy diesel oil into bilges, the contents of which are discharged into the sea without being passed through an oily-water separator."<sup>10</sup>

To ensure compliance with the Convention's provisions, and detection of contraventions, the Convention provides that:

1. States parties to it shall ensure the provision in their ports of facilities adequate for the reception without causing undue delay to ships, of such residues from oily ballast and tank washing . . . .<sup>11</sup>
2. Every ship to which the Convention applies shall carry on board an oil record book in which shall be entered records of operations involving oil discharges and which shall be available for inspection by appropriate authorities of

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<sup>5</sup> International Convention for the Prevention of Pollution of the Sea by Oil, *Opened for signature* May 12, 1954, [1961] 1 U.S.T. 2987, T.I.A.S. No. 4900, 324 U.N.T.S. 3.

<sup>6</sup> Third preambular paragraph of the International Convention for the Prevention of Pollution from Ships, May 2, 1973, I.M.C.O. Doc. MP/CONF/WP 35 (Nov. 2, 1973); 12 INT'L LEGAL MATERIALS 1319 (1973). [Hereinafter the 1973 Ship Pollution Convention].

<sup>7</sup> The "prohibited zones" extended to at least "50 miles from the nearest land" with a number of well-defined exceptions. See Annex A. of the Convention, *supra* note 5.

<sup>8</sup> International Convention for the Prevention of Pollution of the Sea by Oil, *supra* note 5, art. III.

<sup>9</sup> *Id.* art. VI.

<sup>10</sup> *Id.* art. VII.

<sup>11</sup> *Id.* art. VIII.

- Contracting States when such ships entered or were in their ports.<sup>12</sup>
3. Contracting States which come into possession of evidence suggesting that a ship has contravened the provisions of the Convention may furnish such evidence to the Contracting State in which the ship concerned is registered and the latter State shall, if satisfied that the evidence so warrants, cause proceedings to be taken against the ship and report the results of the proceedings to the reporting State as well as the Bureau of the Convention for transmission to other Contracting States.<sup>13</sup>
  4. Contracting States shall send to the Bureau of the Convention the texts of laws and other legislative instruments enacted to give effect to the Convention, as well as official reports and information on the application of the provisions of the Convention in their territories.<sup>14</sup>

The Convention was deposited with the Government of the United Kingdom, pending the inception of the Inter-Governmental Maritime Consultative Organization (IMCO), after which that organization was to assume the depositary functions in respect to the Convention. The Convention entered into force on 26 May 1958. Having come into existence in January 1959, IMCO became the depositary of the Convention.

In 1962, IMCO convened a Conference of Contracting Governments to review the 1954 Convention. This Conference adopted amendments which, *inter alia*, extended the application of the Convention to ships of lesser gross tonnage and extended the zones in which the discharge of oil is prohibited (the "prohibited zones").<sup>15</sup> The Conference also adopted a revised Article on Amendments which empowered the Assembly of IMCO, on the recommendations of IMCO's Maritime Safety Committee, to adopt amendments to the Convention and submit them to Contracting Governments for their acceptance.<sup>16</sup> This was a particularly important provision since it enabled the Convention to be kept under continued review and amendments to be adopted as and when necessary, without resorting to the cumbersome procedure of convening diplomatic conferences every time.

The Convention, as amended in 1962, has been in force since

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<sup>12</sup> *Id.* art. IX.

<sup>13</sup> *Id.* art. X.

<sup>14</sup> *Id.* art. XII.

<sup>15</sup> The text of the Amendments adopted in 1962 appears in [1966] 2 U.S.T. 1523, T.I.A.S. No. 6109, 600 U.N.T.S. 332.

<sup>16</sup> *Id.* art. XVI (as amended).

June 1957. There are currently 52 states parties to the 1954 Convention as amended. This means that over 91 percent of the world's ocean-going ships and 95 percent of the world tanker fleet are covered by the provisions of the Convention.

*1969 and 1971 Amendments to the 1954/62 Convention*

In 1969, the IMCO Assembly adopted, by Resolution A.175(VI), extensive amendments to the 1954 Convention and its Annexes as amended in 1962.<sup>17</sup> Excluding certain practical exemptions, these amendments prohibit all discharges of oil through the normal operation of ships. When they enter into force the restrictions to be applied will include:

1. Limitation of the total quantity of oil which a tanker may discharge in any ballast voyage to 1/15000 of the total cargo carrying capacity of the vessel;
2. Limitation of the rate at which oil may be discharged to a maximum of 60 litres per mile travelled by the ship; and,
3. Prohibition of discharge of any oil whatsoever from the cargo spaces of a tanker within 50 miles of the nearest land.

The 1969 amendments also provide for a new form of oil record book which will facilitate the task of the officials concerned with controlling the observance of the Convention. Governments which have received particulars from another government of an alleged contravention by a ship carrying their flag will be obliged to inform IMCO and the reporting government of the action taken as a consequence of the information communicated, whether or not proceedings are brought against the ship. When they enter into force, these amendments should considerably reduce the overall total quantity of oil discharged into the sea and achieve significant progress towards the ultimate goal of complete avoidance of discharge of oil. The 1969 amendments have not yet entered into force. Of the 35 acceptances required for entry into force, 24 acceptances have so far been deposited.

In 1971, the IMCO Assembly adopted, by Resolution A.232(VII), an amendment to the Convention aimed at providing special protection for the Great Barrier Reef Area, in view of the unique scientific and environmental significance of this area. This amendment has not yet entered into force, as only 12 out of the 35 required acceptances have so far been deposited.

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<sup>17</sup> The text of the 1954/62 Convention, with the 1969 Amendments appears in 9 INT'L LEGAL MATERIALS 1 (1970).



*The Convention for the Prevention of Pollution from Ships, 1973*

By 1969, it had become clear that far-reaching developments in industrial practices and ship operations had introduced a problem of pollution control and prevention which could not adequately be solved by the measures possible under the 1954/62 Convention, even with its many subsequent amendments. In recognition of this new development, the IMCO Assembly decided in 1969 to convene a conference in 1973 for the purpose of adopting a new international instrument whose prime objective would be to place restraints on the contamination of the sea, land and air by ships, vessels, or other equipment operating in the marine environment.<sup>18</sup> After nearly four years of intensive work involving practically all the organs and bodies of IMCO, the International Conference on Marine Pollution was convened in October/November 1973. The Conference adopted, for the first time, a comprehensive instrument aimed at achieving the "complete elimination of intentional pollution of the marine environment by oil and other harmful substances and the minimization of accidental discharges of such substances."<sup>19</sup> The Convention applies to all shipborne substances including oil, noxious liquid substances carried in bulk, noxious substances carried in packages or containers, ship-generated garbage and ship-generated sewage. But, although the new Convention, unlike the earlier Convention of 1954/62, applies to all shipborne substances, a large proportion of its provisions relate to oil.

Annex I of the Convention contains the Regulations for the Prevention of Pollution by Oil. These Regulations are intended, upon the entry into force of the Convention, to supersede, as between the states parties to the 1973 Convention, the provisions of the 1954/62 Convention and the various amendments adopted thereto.<sup>20</sup> For this reason, the Regulations of the 1973 Convention incorporate all the provisions of the 1954/62 Convention and amendments, together with modifications which have become necessary since these amendments were adopted.

The principal provisions of the 1973 Convention, as far as it relates to oil, may be summarized as follows:

1. The Regulations of the Convention maintain, with a few extra provisions, the discharge criteria prescribed in the

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<sup>18</sup> IMCO Assembly Resolution A. 176(VI).

<sup>19</sup> The 1973 Ship Pollution Convention, *supra* note 6, fourth preambular paragraph.

<sup>20</sup> *Id.* art. XIX.

1954/62 Convention and the amendments thereto. These criteria apply to both persistent and non-persistent oils. In effect, therefore, all types of oils are covered by the regime of the Convention.<sup>21</sup>

2. All oil-carrying ships are required to be able to retain on board unwanted oils and oily mixtures.<sup>22</sup> This is to be done either by means of the "load-on-top" system or for discharge at reception facilities at appropriate ports. Under the "load-on-top" system, unwanted oily mixtures are not discharged into the sea as hitherto, but are kept in the tanks and retained on top of oil cargoes when these cargoes are loaded into the tanks. The non-polluting parts of the mixtures are subsequently disposed of at sea, care being taken to ensure that all polluting elements are kept in the tanks and reloaded "on top" of further oil cargoes. For ships that may not be willing or able to operate the "load-on-top" system, the provision of shore reception facilities at appropriate ports enables them to discharge into receivers at ports the oily mixtures which they might otherwise have felt obliged to discharge into the sea and thus pollute the waters. To ensure that oil-carrying ships can retain oily mixtures on board, all new and existing oil tankers and other ships are required, under the Convention, to be fitted with appropriate equipment which will include an oil discharge monitoring and control system, oily-water separating equipment or filtering tanks, slop tanks, sludge tanks, piping and pumping arrangements.<sup>23</sup>
3. On construction of tankers, the Convention introduces two new requirements. The first is that every new tanker of 70,000 tons deadweight or above must be fitted with segregated ballast tanks sufficient in capacity to provide adequate operating draught without the need for the ship to carry ballast water in cargo oil tanks.<sup>24</sup> It will be remembered that much of the pollution from deliberate discharges arises from the need to carry ballast water in cargo oil tanks on unladen ships — and the need to dispose of this "oily ballast" before taking on fresh cargo. The provision of segregated ballast tanks is designed to eliminate the problem without adversely affecting the safe and efficient operation of tankers. The second new requirement, relating to subdivision and dam-

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<sup>21</sup> *Id.* Regulation 1 of Annex I defines oil as follows:

"Oil means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products and, without limiting the generality of the foregoing, includes the substances listed in Appendix I to this Annex." And "oily mixture" is defined as "A mixture with any oil content."

<sup>22</sup> *Id.* Regulation 15.

<sup>23</sup> *Id.* Regulation 16, 17 & 18.

<sup>24</sup> *Id.* Regulation 13.

age stability, is intended to enable tankers to survive after collisions or strandings.<sup>25</sup>

4. Another important new feature in the 1973 Convention is the provision on "special areas." Under this provision, specified areas which are considered to be particularly vulnerable to pollution by oil have been designated as "special areas." In these areas, discharges of oil of all kinds are completely prohibited, with only very minor and well-defined exceptions. The main special areas specified in the Convention are the Mediterranean Sea Area, the Black Sea Area, the Baltic Sea Area, the Red Sea Area and the "Gulfs" Area.<sup>26</sup>
5. As in the 1954/62 Convention, the 1973 Convention imposes on states parties to it the obligation "to give effect to the provisions of the Convention including its Annexes and Protocols."<sup>27</sup> In particular, it provides that violations of the requirements of the Convention shall be prohibited and sanctions shall be established therefor under the law of the Administration of the ship (the state under whose authority the ship operates), irrespective of where the violation occurs.<sup>28</sup> Additionally, any violation of the requirements of the Convention within the jurisdiction of any party to the Convention within the jurisdiction of any party to the Convention shall be prohibited and sanctions shall be established therefor under the law of that party.<sup>29</sup> For the purpose of enforcement, the Convention provides also that:
  - (a) A state which has evidence that a ship belonging to it has contravened the provisions of the Convention in areas outside its jurisdiction should take action against the ship and inform, among others, the state or states which provided the evidence and the depositary of the Convention (i.e. IMCO);<sup>30</sup>
  - (b) A state which has evidence that a ship not belonging to it has contravened the provisions of the Convention outside that state's jurisdiction, should submit such evidence to the state under whose authority the offending ship is operating;<sup>31</sup>
  - (c) A state which has evidence that a ship, whether belonging to it or not, has contravened the provisions of the Convention within its area of jurisdiction, is empowered and obliged either to prosecute the ship ac-

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<sup>25</sup> *Id.* Regulation 25.

<sup>26</sup> *Id.* Regulation 10.

<sup>27</sup> *Id.* art. I, para. (1).

<sup>28</sup> *Id.* art. IV, para. (1).

<sup>29</sup> *Id.* art. IV, para. (2).

<sup>30</sup> *Id.* art. VI, para. (4).

<sup>31</sup> *Id.* art. VI, paras. (2) and (3).

ording to its law or pass the evidence on to the state under whose authority the ship is operating;<sup>32</sup>

- (d) The penalties specified under the law of a party to the Convention "shall be adequate in severity to discourage violations of the . . . Convention and shall be equally severe irrespective of where the violations occur."<sup>33</sup>
6. Every ship to which the Convention applies is required to hold an International Oil Pollution Prevention Certificate testifying that it meets the requirements of the Convention with regard to structure, equipment, fittings, arrangements and material.<sup>34</sup> Such certificates, to be issued only after appropriate surveys as stipulated in the Convention, must be carried on board the ship and be available for inspection by duly authorized officers when the ship is in ports or off-shore terminals under the jurisdiction of a state party to the Convention. Where such inspection provides clear grounds that the condition of the ship or its equipment does not correspond substantially with the particulars of the certificate carried by the ship, or that the ship does not carry the required certificate, the inspecting state is obliged and empowered "to take such steps as will ensure that the ship shall not sail until it can proceed to sea without presenting an unreasonable threat of harm to the marine environment."<sup>35</sup> A state may also deny a foreign ship entry to its ports or off-shore terminals under its jurisdiction if the ship does not comply with the provisions of the Convention.<sup>36</sup>
7. Parties to the Convention are under an obligation to "co-operate in the detection of violations and the enforcement of the provisions of the Convention using all appropriate and practicable measures of detection and environmental monitoring, adequate procedures for reporting and accumulation of evidence."<sup>37</sup> To this end the Convention provides:
- (a) Officers of a Contracting State may inspect a ship to which the Convention applies while such ship is in any port or off-shore terminal of the party concerned, either on their own initiative or when a request for an investigation is received from another party with "sufficient evidence" that the ship has violated the provisions of the Convention;<sup>38</sup>
- (b) Any evidence acquired through such inspection shall be forwarded to the State of the ship, which is then re-

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<sup>32</sup> *Id.* art. IV, para. (2).

<sup>33</sup> *Id.* art. IV, para. (4).

<sup>34</sup> *Id.* Annex I, Regulation 5.

<sup>35</sup> *Id.* art. V, para. (2).

<sup>36</sup> *Id.* art. V, para. (3).

<sup>37</sup> *Id.* art. VI, para. (1).

<sup>38</sup> *Id.* art. VI, para. (2).

quired to prosecute if the evidence so warrants; and, in any case, inform the reporting State (and IMCO) of the action taken;<sup>39</sup>

- (c) Full and prompt reporting of incidents involving discharges of oil, and the circulation of information on such incidents to parties of the Convention, through IMCO, shall be made in accordance with procedures set forth in a Protocol to the Convention.<sup>40</sup>

The 1973 Convention applies to all ships entitled to fly the flag of a state party to the Convention or operating under the authority of such a party.<sup>41</sup> "Ship" is defined broadly to include "a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms."<sup>42</sup> However, this broad definition does not bring all incidents likely to cause oil pollution at sea under the scope of application of the Convention. For the Convention deals with "discharges" of oil and discharge is defined as "any release howsoever caused from a ship and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying" but does not include:

1. Dumping within the meaning of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, done at London on 13 November 1972;
2. Release of oil directly arising from the exploration, exploitation and associated off-shore processing of seabed mineral resources.<sup>43</sup>

Apart from these exceptions, the 1973 Convention appears sufficiently broad in scope to cover almost all incidents at sea involving marine pollution by oil.

Although the Convention, as such, does not apply to ships of states which are not parties to it, it provides, with respect to such ships, that "[p]arties shall apply the requirements of the present Convention as may be necessary to ensure that no more favourable treatment is given to such ships."<sup>44</sup>

The Convention contains an Article on Settlement of Disputes which provides that, in the absence of settlement by such traditional methods as negotiation or other methods agreed to by the

<sup>39</sup> *Id.* art. VI, para. (3).

<sup>40</sup> *Id.* art. VIII and Protocol I of the Convention.

<sup>41</sup> *Id.* art. III.

<sup>42</sup> *Id.* art. II, para. (4).

<sup>43</sup> *Id.* art. II, para. (3), subparagraphs (a) and (b).

<sup>44</sup> *Id.* art. V, para. (4).

parties, disputes are to be submitted to arbitration in accordance with a procedure set out in a Protocol to the Convention.<sup>45</sup>

To provide for a speedy amendment of the Convention by modifying its provisions to take account of developments, the Convention incorporates an article on amendments which provides for a variety of procedures for amending the Convention and its Annexes.<sup>46</sup> The most important of these is the "accelerated procedure" which involves the "tacit acceptance" by states of amendments adopted through an institutional arrangement within IMCO. Under this procedure, proposed amendments to the Regulations are considered by the Marine Environment Protection Committee of IMCO and, when adopted by the Contracting States on that Committee, are circulated to all Contracting States for consideration and acceptance. An amendment so circulated is deemed to have been accepted within a specified period unless a given proportion (one-third) of the parties indicate objection to it. In the absence of such objection, the amendments enter into force within a specified period of time and apply to all parties except those who specifically state that they do not wish to be bound. Therefore, amendments are brought into force automatically at specified times and for all parties. A party which does not wish that an amendment enter into force or which does not wish that the amendment apply to it has to take positive steps in that direction. Under the traditional amendment procedure used in the earlier Convention of 1954/62, amendments could only be brought into force by the "explicit act" of a large number of parties. This not only made the dates of entry into force uncertain, but actually made it difficult to bring any amendments into force, since in almost all cases legislative inertia of states resulted in no action being taken — even by states which were in favor of the amendments.

The 1973 Convention shall enter into force 12 months after it has been accepted by at least 15 states, the combined merchant fleets of which constitute not less than 50 percent of the world's merchant shipping.<sup>47</sup>

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<sup>45</sup> *Id.* art. X and Protocol II of the Convention.

<sup>46</sup> *Id.* art. XVI.

<sup>47</sup> *Id.* art. XV.

### III. CONVENTIONS AND INSTRUMENTS AIMED AT PREVENTING ACCIDENTS WHICH MAY RESULT IN THE DISCHARGE OR ESCAPE OF OIL FROM SHIPS

The conventions and instruments in this field are of two main kinds:

A. Conventions whose primary objective is to prevent accidents at sea, regardless of whether such accidents will or will not involve pollution of the sea. Among these, the following are the most important:

1. The International Convention on Safety of Life at Sea, 1960 with its amendments of 1966, 1967, 1968, 1969, 1971 and 1973.<sup>48</sup>
2. The International Regulations for Preventing Collisions at Sea, 1960.<sup>49</sup>
3. The Convention on the International Regulations for Preventing Collisions at Sea, 1972.<sup>50</sup>
4. The International Convention on Load Lines, 1966.<sup>51</sup>
5. The International Convention on Safety of Life at Sea, 1974.<sup>52</sup>

While these instruments are primarily intended to promote maritime safety and efficiency, they are an important part of the fight against pollution of the sea by shipborne oil and other polluting substances since, by ensuring the highest standards of safety, they serve to eliminate or reduce to a minimum incidents which are likely to result in the discharge or escape of oil into the sea.

B. The other group of instruments are those designed specifically to prevent pollution accidents. Although there are no such separate instruments, some of the provisions of existing conventions are devoted solely or mainly to this particular problem. Of these, special reference must be made to:

1. The 1971 amendments to the 1954/62 Convention for the Prevention of Pollution of the Sea by Oil. This amendment, the second to be adopted by the IMCO Assembly in 1971, was intended to deal with the increasing danger of pollution arising from the very substantial increase in the size of individual

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<sup>48</sup> IMCO Sales No. 1970-6, with amendments adopted by the following resolutions of the IMCO Assembly: A.108(ES.III) 1966; A.122(V) 1967; A.146(ES.IV) 1968; A.174(VI) 1969; A.205(VII) 1971; A.263-264(VIII) 1973.

<sup>49</sup> IMCO Sales No. 1970-6, Annex B., at 404.

<sup>50</sup> IMCO Sales No. 1973-3.

<sup>51</sup> IMCO Sales No. 1968-3.

<sup>52</sup> Adopted in London on 1 November 1974.

tanks in oil-carrying ships (tankers).<sup>53</sup> Until then, the size of individual tanks in tankers was limited only by strength considerations which might permit the design of a 1,000,000 ton tanker with individual tanks as large as or exceeding the total capacity of the "Torrey Canyon." The magnitude of the pollution which might arise from a ship of these dimensions, if involved in an accident (such as collision or stranding), led to efforts in IMCO to take urgent and positive action aimed at limiting the escape of oil in case of such a mishap.

Based on the results of intensive studies, which included consideration of tank design and distribution and the costs and other consequences of tank size limitation, the IMCO Assembly adopted the amendment which limits the capacity of tanks in a tanker and the arrangement of the tanks, according to certain criteria. The purpose of the amendment is to limit the oil outflow in the event of a collision or stranding.

These requirements will apply to tankers for which the building contract is placed on or after 1 January 1972, and also to any other tanker which will be delivered after 1 January 1977.

2. Chapter III of the Regulations for the Prevention of Pollution by Oil being Annex I of the International Convention for Prevention of Pollution from Ships, 1973.<sup>54</sup> The Regulations of this Chapter contain requirements for minimizing oil pollution from oil tankers due to side and bottom damages. These include provisions for arrangements and equipment "for reducing oil outflow in case of bottom damage, including cargo transfer systems . . . capable of transferring from a breached tank or tanks . . .,"<sup>55</sup> limitation of tank size and arrangement of cargo tanks along the lines of the 1971 amendment and criteria for subdivision and stability for tankers.<sup>56</sup> These provisions have the objective of either preventing accidents or preventing or minimizing the escape of oil if accidents do occur. They complement, in an important way, the provisions in Chapter II of the Regulations which deal with discharges or escape of oil which arise from the routine operation of the ship, and are generally deliberate or the result of negligent action.

#### IV. CONVENTIONS AND INSTRUMENTS WHICH ESTABLISH ARRANGEMENTS AND PROCEDURES FOR DEALING WITH POLLUTION OR THE THREAT OF POLLUTION ARISING AS A RESULT OF ACCIDENTS

In addition to the provisions of the 1973 Convention aimed at preventing accidental pollution and minimizing the effects of ac-

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<sup>53</sup> Text in 11 INT'L LEGAL MATERIALS 267 (1972).

<sup>54</sup> See note 19 *supra*.

<sup>55</sup> *Id.* Regulation 23.

<sup>56</sup> *Id.* Regulation 24.



cidents and the other practical measures which have been adopted, mainly within IMCO, to deal with accidental oil pollution of the sea,<sup>57</sup> there is one international instrument which addresses itself directly to this problem. This is the Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties.<sup>58</sup> This Convention was adopted in the aftermath of the "Torrey Canyon" disaster and was intended to answer one of the questions which had become very pertinent as a result of that incident. This question related to the extent to which a coastal state could take measures to protect its coastal and related interests against pollution from oil resulting from an accident at sea, but outside territorial waters. The Convention, adopted in Brussels in December 1969, affirms the right of the coastal state to take such measures on the high seas as may be necessary to prevent, mitigate or eliminate danger to its coastline or related interests from oil pollution or the threat thereof, following upon a maritime casualty.<sup>59</sup> The coastal state is, however, empowered to take only such measures as are necessary and proportionate in light of the pollution or threat thereof. It is also required, before taking any action, to consult with, *inter alia*, other states affected by the casualty including, in particular, the flag state or states of the ship or ships involved and the other interests involved in the measures such as the owners of the ships or cargoes in question.<sup>60</sup> The coastal state is also required to consult independent experts to be chosen from a list prepared and maintained by IMCO. Such prior consultations may, however, be dispensed with.<sup>61</sup> A coastal state which takes measures beyond those permitted under the Convention is liable to pay compensation for any damage caused by such unauthorized measures.<sup>62</sup> The Convention con-

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<sup>57</sup> In addition to the Conventions, the Diplomatic Conferences generally adopt important resolutions on practical measures for dealing with the problem of marine pollution. These Conventions and Resolutions are, moreover, supplemented by the large number of recommendations and guidelines issued by IMCO. Among these the most important are the recommendations on:

- (1) Reports on accidents involving significant spillages of oil.
- (2) Provision of facilities in ports for the reception of oily residues from ships.

In addition, IMCO has produced a manual on marine pollution which is intended to assist governments, particularly those from developing countries, which may be called upon to deal with oil spillages.

<sup>58</sup> 9 INT'L LEGAL MATERIALS 25 (1970).

<sup>59</sup> *Id.* art. I.

<sup>60</sup> *Id.* art. III, para. (6).

<sup>61</sup> *Id.* art. III, paras. (c) and (d).

<sup>62</sup> *Id.* art. VI.

tains provisions for the settlement of disputes through negotiation, conciliation or arbitration.<sup>63</sup>

The Convention entered into force on 6 May 1975. There are now 20 states party to it.

## V. CONVENTIONS AND INSTRUMENTS ON LIABILITY AND COMPENSATION FOR DAMAGE FROM OIL POLLUTION

It was not until the massive pollution damage of the "Torrey Canyon" disaster that the issue of liability and compensation came to the foreground of international thinking. The issues to which special attention was given in the immediate aftermath of the disaster were:

- A. Who was to be held liable for oil pollution damage arising from accidents — the owner of the ship from which the oil escaped or the owner of the oil which caused the damage?
- B. What was to be the basis of the liability? Was it to be based on the traditional maritime law regime under which liability is based on fault or was it to be a form of strict or absolute liability?
- C. What was to be the extent of liability? Was it to be on the basis of the actual damage caused or were there good grounds for setting a limit to the liability and, if so, by reference to what criteria was such a limit to be determined?
- D. Which was the best means of ensuring that compensation would in fact be available to victims from the persons held liable for pollution damage?

These questions, or some of them, are dealt with in the Convention on Civil Liability for Oil Pollution Damage, 1969.<sup>64</sup> Under this Convention, liability for oil pollution damage is placed on the owner of the ship transporting the oil. The shipowner's liability is strict; i.e., it is independent of the fault of the shipowner. However, the owner is relieved of liability if he is able to prove that the escape of the oil was due to one of a few well-defined exceptional causes.<sup>65</sup> Among these are wars and other forms of hostilities, natural disasters of an exceptional nature, acts or omissions of third parties done with intent to cause damage, or other wrongful acts of governments or other authorities responsible for the maintenance of navigational aids. The liability of the shipowner is limited in respect of each incident. This limitation is

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<sup>63</sup> *Id.* art. VIII and Annex.

<sup>64</sup> Text in 9 INT'L LEGAL MATERIALS 45 (1970).

<sup>65</sup> *Id.* art. III.

based on the tonnage of the ship, but there is an upper limitation figure of approximately \$14 million.<sup>66</sup> This means that no shipowner will be required to pay compensation beyond \$14 million even if the damage actually suffered is well beyond this figure. The Convention also contains provisions determining which courts shall have jurisdiction in cases where pollution damage occurs in more than one state and provisions relating to the recognition and enforcement of the judgments of competent courts in the other Contracting States.<sup>67</sup> Shipowners of Contracting States are required to maintain insurance or some other acceptable guarantee to cover their liability under the Convention and ships are required to carry certificates evidencing that such insurance is in force for them.<sup>68</sup> Contracting parties to the Convention are required to prevent their ships from trading without the required certificate and to deny access to their ports to ships of other states if the ships do not possess the required certificate of insurance. This requirement applies equally to ships of states not parties to the Convention.<sup>69</sup>

Although the 1969 Liability Convention provided a useful mechanism for ensuring the payment of compensation for oil pollution damage, it did not deal satisfactorily with all the legal, financial and other questions raised during the 1969 Conference. Some states objected to the regime established, since it was based on the strict liability of the shipowner for damage which he could not foresee and, therefore, represented a dramatic departure from traditional maritime law which based liability on fault. On the other hand, some states were dissatisfied with the system of liability limitation adopted. They felt that the limitation figures adopted were likely to be inadequate in cases of oil pollution damage involving some of the large oil-carrying ships in the process of construction and development. They therefore wanted an unlimited level of compensation or a very high limitation figure, if any such figure were to be accepted.

In light of these reservations, the 1969 Conference considered a compromise proposal to establish an international fund to be subscribed to by the cargo interests. This would be available for the dual purpose of relieving the shipowner of the burden imposed on him by the requirements of the new Convention and providing

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<sup>66</sup> *Id.* art. V.

<sup>67</sup> *Id.* arts. IX and X.

<sup>68</sup> *Id.* art. VIII, para. (1).

<sup>69</sup> *Id.* art. VIII, paras. (10) and (11).

additional compensation to the victims of pollution damage in cases where compensation under the 1969 Convention was either inadequate or unobtainable.

In 1971, a conference convened by IMCO adopted the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage.<sup>70</sup> This Convention is supplementary to the 1969 International Convention on Civil Liability for Oil Pollution Damage. Under the 1971 Convention, an International Oil Pollution Compensation Fund is established first, to ensure adequate compensation for victims of pollution damage who are unable to obtain any or adequate compensation under the 1969 Liability Convention and second, to provide some relief to shipowners in respect to part of the additional financial burden imposed on them by the 1969 Civil Liability Convention.<sup>71</sup> A state which has suffered oil pollution damage and which has not been fully compensated for it under the 1969 Convention will receive compensation from the Fund, up to a maximum amount of \$30 million, more than twice the limitation figure established in the 1969 Civil Liability Convention. The Convention also provides that the Fund shall provide to the shipowner some indemnity in respect to the liability imposed on him under the 1969 Convention. However, a shipowner is only able to benefit from the 1971 Convention if his ship complies with certain international conventions establishing safety and anti-pollution standards.<sup>72</sup>

The Fund is maintained by initial and annual contributions from persons in Contracting States who receive "contributing oil" in substantial amounts in ports or terminal installations in those states. Assessments and other necessary administration are carried out by a fund organization composed of all Contracting States.

The 1969 Civil Liability Convention entered into force on 19 June 1975. There are at present 16 states party to the Convention. The 1971 Fund Convention is not yet in force. To enter into force it must be ratified or accepted by at least eight states

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<sup>70</sup> Text in 11 INT'L LEGAL MATERIALS 284 (1972).

<sup>71</sup> *Id.* art. II.

<sup>72</sup> *Id.* art. V., para. (3). The Conventions which must be observed are:

- (a) The International Convention for the Prevention of Pollution of the Sea by Oil, 1954/62.
- (b) The International Convention for the Safety of Life at Sea, 1960.
- (c) The International Convention on Load Lines, 1966, and
- (d) The International Regulations for Preventing Collisions at Sea, 1960, together with important amendments to these instruments.

and the total quantity of contributing oil received in all the states accepting the Convention must be not less than 750 million tons per year.<sup>73</sup>

## VI. REMARKS

The conventions and instruments described so far in this paper deal only with oil pollution from ships. The only possible exception is the 1973 Convention which deals, in some way, with pollution from such devices as drilling rigs engaged in ocean exploration and exploitation.<sup>74</sup> But even this coverage is of a very limited nature. The 1973 Convention applies to pollution from these devices only in so far as the pollution arises from discharges from the devices. It does not cover discharges or escape of oil as a result of the operations of these devices. Thus, spills and blow-ups from oil wells, the most important and serious likely source of pollution from these devices, are not covered by the 1973 Convention. As of now, the prevention and control of oil pollution arising from the exploration and exploitation of the ocean resources is not covered by specific international agreements. There are moves in this direction on a regional basis, but much remains to be done.<sup>75</sup>

## VII. OTHER CONVENTIONS AND INSTRUMENTS

In addition to conventions and instruments of a global scope of application, there have been a number of conventions, generally on a regional basis, which deal with the problem of oil pollution, as well as pollution by other pollutants. These instruments are generally more comprehensive in scope and are not confined to oil alone. Among these the most important are the following:

- A. The Nordic Environmental Protection Convention of 1974.<sup>76</sup>
- B. The Paris Convention on the Prevention of Land-Based Sources of Pollution.<sup>77</sup>

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<sup>73</sup> *Id.* art. IX.

<sup>74</sup> The 1973 Ship Pollution Convention, *supra* note 6. Regulation 21 of Annex I contains "Special Requirements for Drilling Rigs and other Platforms." But these requirements relate solely to "discharges" of oil.

<sup>75</sup> See 5 MARINE POLLUTION BULLETIN No. 9 (1974) at 1-2. See also Royal Commission on Environmental Pollution, Fourth Report (1974) at 44-45 (paras. 125 to 129) and 82 (para. 227). The provisions of Article 24 of the Convention on the High Seas also deal with this subject, although in a very general way. See note 80 *supra*.

<sup>76</sup> 13 INT'L LEGAL MATERIALS 591 (1974).

<sup>77</sup> *Id.* at 352.

C. The Convention on the Protection of the Marine Environment of the Baltic Area of 1974.<sup>78</sup>

In addition to these, moves are in the offing with regard to the Mediterranean Area. Following considerable activity since 1972, a conference was held in 1975 in Barcelona at which the outlines of a Framework Convention for Preserving the Mediterranean Sea Area were agreed upon.<sup>79</sup>

On a more global basis, reference must be made to the proposals now before the Third United Nations Conference on the Law of the Sea. Throughout the discussions in the Third Committee of the Conference there have been proposals for inclusion in the eventual Convention to be adopted by the Conference. Those provisions relate to the prevention and control of marine pollution and the question of liability and compensation for marine pollution damage. While there has been controversy as to the nature and extent of any such provisions, there has not been any controversy whatsoever about the necessity of such provisions or of the propriety of including some provisions in the Convention. The Single Negotiating Text submitted to the Conference at the end of its third session in May 1975 contains, in Part III thereof, comprehensive draft provisions on the problem of marine pollution prevention and control. Although these texts are, at this stage, nothing more than proposals intended to form the basis of negotiation and compromise, there can be little doubt that most general ideas embodied in them will find their way eventually into the Law of the Sea Convention and thus bolster what has so far been done in the less comprehensive conventions and instruments.<sup>80</sup>

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<sup>78</sup> *Id.* at 546.

<sup>79</sup> The Barcelona Conference was held under the sponsorship of the United Nations Environment Programme (UNEP) from 28 January to 4 February 1975. Following the discussions there, it has been agreed to proceed with work on the preparation of a Framework Convention for the Protection of the Mediterranean. This Framework Convention will have a number of Protocols, among which will be one "Protocol of Co-operation in Combating Pollution of the Mediterranean by Oil and other Harmful Substances." The text of the draft Protocol is to be found in UNEP Doc. WG.2/INF.4.

<sup>80</sup> The texts are contained in document A/Conf.62/WP.8, Part III. As of now the only general convention provision on the subject of marine pollution is that contained in the 1958 Convention on the High Seas, Article 24 of which provides that "Every State shall draw regulations to prevent pollution of the sea by the discharge of oil from ships or pipelines or resulting from the exploration of the seabed and its subsoil, taking account of existing treaty provisions on the subject."