



EAST WEST UNIVERSITY

DISSERTATION

On

**ROLE OF “1969 INTERNATIONAL CONVENTION RELATING TO
INTERVENTION ON THE HIGH SEAS IN CASES OF OIL
POLLUTION CASUALTIES” IN PREVENTING POLLUTION OF
HIGH SEAS THROUGH OIL SPILLS: A CRITICAL ANALYSIS**

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SUBMITTED TO:

Dr. Nabaat Tasnima Mahbub

Assistant Professor

Department of Law

East West University

SUBMITTED BY:

Md. Nazrul Islam

ID: 2019-2-66-004

Department of Law

East West University

Date of Submission:



Consent Form

The Dissertation titled — **Role of “1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties”** in preventing pollution of high seas through oil spills: A critical analysis prepared by **Md. Nazrul Islam, ID: 2019-2-66-004** submitted to **Dr. Nabaat Tasnima Mahbub, Assistant Professor of Department of Law, East West University** for the fulfillment of the requirements of Course 406 (Supervised Dissertation) for LL.B. (Hons.) degree offered by the Department of Law, East West University is approved for submission.

Signature of the Supervisor

Date:

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Declaration

I, **Md. Nazrul Islam**, bearing student ID: **2019-2-66-004**, hereby declared that, this thesis paper titled “**Role of 1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties in preventing pollution of high seas through oil spills: A critical analysis**” was entirely prepared by me under the supervision of **Dr. Nabaat Tasnima Mahbub**, Assistant Professor, Department of Law, East West University for my graduation requirement. I further declare that no journal, newspaper, or article has submitted or published the content of this thesis work. The content and materials utilized for this thesis paper are correctly acknowledged and mentioned in the references.

Signature

Md. Nazrul Islam

Id: 2019-2-66-004

Department of Law

East West University

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List of Abbreviation

| | |
|-----------------|---|
| CLC | The International Convention on Civil Liability for Oil Pollution Damage |
| EMSA | The European Maritime Safety Agency |
| Fund Convention | International Fund for Compensation for Oil Pollution Damage |
| IMCO | The Intergovernmental Maritime Consultative Organization |
| ICJ | International Court of Justice |
| IMO | International Maritime Organizations |
| IOPC | International Oil Pollution Compensation Funds |
| MARPOL | International Convention for the Prevention of Pollution from Ships, 1973 |
| OILPOL | International Convention for the Prevention of Pollution of The Sea by Oil |
| OSCOLA | Oxford University Standard for the Citation of Legal Authorities |
| REMPEC | The Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea |
| UNCLOS | The United Nations Convention on the Law of the Sea |
| UN | United Nations |
| UNEP | United Nations Environment Program |

Abstract

“The 1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties”, also known as the "Intervention Convention," is a watershed moment in international maritime law that addresses oil pollution on the high seas. This research provides an overview of the Convention's role in reducing high-sea oil pollution caused by oil spills. The Convention was conceived at a period when there was rising concern about the environmental repercussions of oil spill accidents. It attempted to establish a framework for international cooperation in responding to oil pollution casualties on the high seas when it was adopted in 1969 and entered into force in 1975. While the convention prioritized reaction and intervention techniques, it has a diverse role in reducing high-sea oil pollution. The study explores the Intervention Convention's role in preventing high-sea oil pollution, emphasizing its historical context, objectives, and provisions, emphasizing international cooperation and protecting personnel and equipment. The Intervention Convention, primarily focused on response, lacked comprehensive prevention measures, leading to its overshadowing by the International Convention on Oil Pollution Preparedness, Response, and Co-operation. The Intervention Convention, despite its limitations, significantly influenced international cooperation in addressing high-sea oil pollution, laying the framework for future agreements and contributing to the understanding of maritime law and environmental protection.

Chapter 1

Introduction

1.1 Background of Research

The words “environment” and “pollution” are combined to form the phrase “environmental pollution.” The environment means environmental conditions spread around us and pollution means polluted. That instance, environmental pollution refers to the contamination of the environment that surrounds us. This environmental pollution can be caused by natural or artificial causes by humans. We have already been introduced to many types of environmental pollution in many ways and among these, water pollution is a very common term. The contamination of sea water, which has the potential to damage multiple nations, is a dreadful aspect of water pollution. Of the many ways sea water is polluted, the most well-known way is oil spillage. An oil spillage is when oil or petroleum leaks onto a huge body of water's surface.¹ This oil spill is a curse for aquatic ecosystems because it reduces the amount of sunlight in the water and reduces dissolved oxygen.

The open portion of an ocean or sea that is far from shore or outside of a nation's territorial authority is known as the high seas.² According to UNCLOS Maritime and Airspace zones, we know that up to 12 nautical miles from land is the Territorial Sea of a nation and the next 200 nautical miles is the Exclusive Economic Zone.³ And since then, the boundaries of the high sea have basically begun.

High sea oil pollution is a sensitive issue as it directly damages high-sea living resources. And it started in the 1960s, where that year, oil spills in the ocean became a significant environmental issue, mostly as a result of increased petroleum exploration and production on continental shelves and the usage of supertankers that could carry more than 500,000 metric tons of oil.⁴ Besides this, Torrey Canyon, a Liberian-flagged oil tanker carrying thirty million gallons of crude oil, became aground on rocks off the coast of the United Kingdom on March

¹ Adam Augustin “Oil Spill” Encyclopædia Britannica (24 August 2023)
<<https://www.britannica.com/science/oil-spill>> accessed 25 August,2023

² “High Seas” (The Free Dictionary) <<https://www.thefreedictionary.com/high+seas>> accessed 27 July, 2023

³ Ünlü S, Alpar B and Bayram Ö, “Oil Spill along the Turkish Straits Sea Area; Accidents, Environmental Pollution, Socio-Economic Impacts and Protection” (Açık Erişim Ana Sayfası, 1 December 2018)

⁴ Adam Augustin “Oil Spill” Encyclopædia Britannica (24 August 2023)
<<https://www.britannica.com/science/oil-spill>> accessed 25 August,2023

18, 1967.⁵ This incident turned into the first significant environmental catastrophe of the electronic media era.⁶ Two treaties were signed in November 1969 in Brussels at a conference organized by the Intergovernmental Maritime Consultative Organization (IMCO), a Specialized Agency of the United Nations, as an immediate response to the Torrey Canyon disaster.⁷ One of them is, “1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties” also known as “1969 Intervention Convention”. It was adopted in Brussels, Belgium on 29 November 1969.⁸ The impact of this treaty will be a key discussing point in this thesis.

This proposed research states the complexity of High-Sea pollution, mainly pollution caused by oil spills. This study highlights a treaty that was reached to prevent casualty related to High-Sea oil spills and discusses its impact and its achievements in detail. At the same time, a reader can understand about the matter that High-Sea pollution is a terrible environmental pollution whose direct sufferers are coastal people and living resources of marine ecosystems.

The Torrey Canyon accident of 1967, which gave rise to a treaty named “1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties” and which was the first incident of oil spills in the coast of the sea, is the main theme of this research. Also, the fact that the oil spill has become a sensitive environmental issue, due to the overproduction and use of petroleum oil, is also an important topic of discussion in this thesis. Direct and occasionally harmful effects on the marine environment have been caused by the unregulated discharge of petroleum products and other contaminants from offshore oil exploration and various industrial operations.⁹ And this oil spill is causing terrible High-Sea pollution, which is destroying the ocean ecosystem and polluting the sea water.

The United Nations (UN) has led worldwide efforts to ensure that the seas and oceans are used for peaceful, cooperative, and legally defined purposes.¹⁰ And as a result, the 1969 treaty was drafted, which seeks to keep the high sea pollution-free.

⁵ Ottensooser M, “Oil Pollution on the High Seas: The Establishment of an International Regime to Deal with Public International Law and Private Law Issues and the Role of Non-State Actors in Their Resolution Prior to and at the 1969 International Legal Conference on Marine Pollution Damage (“Brussels Conference”)” (CUNY Academic Works) (2018) 37

⁶ Ibid

⁷ Ibid

⁸ Ibid

⁹ Saeideh Feizabadi, “eRepo - Transboundary Oil Pollution and International Law” (eRepo - Transboundary Oil Pollution and International Law, December 31, 2018) 02

¹⁰ “Chapter I: Article 2(1)–(5) — Charter of the United Nations — Repertory of Practice of United Nations Organs — Codification Division Publications” (Chapter I: Article 2(1)–(5) — Charter of the United Nations — Repertory of Practice of United Nations Organs — Codification Division Publications, June 30, 2023) <<http://legal.un.org/repertory/art2.shtml>> accessed 27 July, 2023

1.2 Research Question

The research question will be answered largely based on the treaty named “1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties” signed in Brussels, Belgium on 29 November. This is because the treaty was signed to prevent pollution from high-sea oil spills. This treaty mainly created by focusing on the damages, liabilities and compensations for oil spills in the high sea. So, the research question is as follows-

To what extent the treaty “1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties” is effective in preventing pollution of High-Sea through oil spills?

1.3 Objectives of Research

The proposed research mainly focused on the impact or role of the treaty named “1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties” for preventing the oil spills on the high sea and reducing the pollution of high sea water. Already it has mentioned earlier that the effects of this high sea pollution are devastating and can destroy an ocean ecosystem. Many aquatic resources may even become extinct due to the effects of this pollution. Even this research wants to find the lacking of the mentioned treaty for preventing the problem. If there is any lacking in this treaty, the research will clarify the reason behind this lacking and tries to provide probable solution for that lacking. The research also discusses some case laws for clarifying the role of International Law for preventing the high sea oil pollution.

1.4 Research Methodology

The proposed research follows the qualitative method as it is a library and literature-based research. Primary and secondary sources are used in this research for finding the answer of this research question. International treaties and Judicial decisions are used as the primary sources. On the other hand, articles from newspapers, online journals, national and international publications, various types of books and websites are used as secondary sources. Also this research has an interdisciplinary approach as it combines the environment and law in one frame. So, this can be called environmental law which is different from the multidisciplinary approach. Finally, the research follows the **OSCOLA** referencing system for referring the

citation and bibliography.

1.5 Literature Review

For making the foundation of this research, some existing literature work on high sea and its pollution through oil spills has been reviewed. Saeideh Feizabadi, in his article named Transboundary Oil Pollution and International Law, stated that for mitigating transboundary oil pollution, International Cooperation is impactful even it is necessary. On the other hand, this research also provided the mechanism of compensation by the alleged state to victim state or coastal state.¹¹ Again, Ottensoser stated the politics of Brussels Conference for making the draft of 1969 Intervention Convention in his article. The article discussed the negotiation of key stakeholders in the Brussels Conference for making the draft and compared the effectiveness of the convention.¹² Lastly, Sands discussed the principle of International Law, International Environmental Law, Marine pollution and the customary International Law in his book named Principle of International Environmental Law.¹³

1.6 Scope and Limitation of the Research

After the Torrey Canyon episode of March 18, 1967, in which a big oil tanker slammed into submerged rocks off the coast of the United Kingdom, the topic of maritime oil pollution caused by ship collisions garnered a lot of attention.¹⁴ The crash caused severe environmental damage, which led to it becoming a global news topic. And this thesis delves to show this incident as the main theme and the main scope for doing the research about preventing the high sea pollution through oil spillage. Because after the incident of Torrey Canyon, the international treaty named “1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties” was signed for preventing the pollution by controlling the production and transportation of oil in the ocean. As this research will discuss the role of international law, it critically analyzes some clauses of this treaty for preventing

¹¹ Saeideh Feizabadi, “eRepo - Transboundary Oil Pollution and International Law” (eRepo - Transboundary Oil Pollution and International Law, December 31, 2018)

¹² Ottensoser M, “Oil Pollution on the High Seas: The Establishment of an International Regime to Deal with Public International Law and Private Law Issues and the Role of Non-State Actors in Their Resolution Prior to and at the 1969 International Legal Conference on Marine Pollution Damage (“Brussels Conference”)” (CUNY Academic Works) (2018)

¹³ Sands P, “Principles of International Environmental Law” (4th edn, Cambridge University Press, 2003)

¹⁴ Ottensoser M, “Oil Pollution on the High Seas: The Establishment of an International Regime to Deal with Public International Law and Private Law Issues and the Role of Non-State Actors in Their Resolution Prior to and at the 1969 International Legal Conference on Marine Pollution Damage (“Brussels Conference”)” (CUNY Academic Works) (2018) 37

high sea oil pollution.

It is important to recognize some study limitations even if the research on the function of international law in preventing high sea oil pollution provides insightful information on the legal frameworks and processes intended to address environmental problems. It may be difficult to provide a thorough study of the current level of high sea pollution control initiatives due to the research's access to real-time data on oil spills and accidents. Additionally, the research might largely concentrate on legal issues or effect of the international treaty without thoroughly examining the larger socio-economic and political factors that may have an impact on high sea oil pollution prevention efforts. To prevent high sea pollution through oil spills, this research has worked with only one of many treaties. The biggest obstacle here was time constraints. Therefore, time constraints are a major limitation for this study.

1.7 Chapter Outline

This research consists of a total of five chapters. The first one is Introduction which has already been discussed above. The second one is an overview of International Law and Marine Pollution where we will find the concept of International Law and Environmental Law. This chapter also provide the concept of Customary rule of International Law which is a main element for mitigating the high sea oil pollution. Then in the third chapter, it will discuss about the international legal framework for preventing high sea oil pollution. This chapter will inform about various types of treaties which is dealt against high sea oil pollution. In chapter four, it will discuss about the effectiveness of “1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties”. Lastly, fifth chapter will provide the recommendations for preventing the pollution and conclusion of research.

Chapter 2

International Law and Marine Pollution: An Overview

The previous chapter discussed the introduction for this research. Basically, it provided the research question, methodology, scope and limitation for this research. Even we found the objective of this research from the introduction chapter. This chapter will mainly provide an overview of International Law and Marine pollution. Also it will provide the overview of Brussels Conference on the “1969 Intervention Convention”, so that the main foundation of this research can be built. “UNCLOS” and “MARPOL” will also be discussed, which will show the impact of high sea oil pollution and how important it is to prevent it.

2.1 Principles of International Law

International law refers to the norms that regulate state-to-state relations.¹⁵ International law encompasses laws, rules, and customs governing legal interactions between states and governments without a defined area.¹⁶ International law regulates state activities, international organizations, non-state actors, international non-governmental organizations, and multinational companies, providing legal personality and duties for these entities.¹⁷ International law encompasses customs, agreements, treaties, protocols, tribunals, and ICJ precedents.¹⁸ International law is binding on states without superior authority.¹⁹ Multilateral treaties only apply to ratified states who agree to them.²⁰

The problem of high sea oil pollution is also a matter or problem under International Law which is discussed under the portion of International Environmental Law. The current environmental movement arose in the 1960s and 1970s.²¹ The publication of Rachel Carson's "Silent

¹⁵ Uche N, “What Is International Law? Everything You Need To Know” (Forbes Advisor, November 21, 2022) <<https://www.forbes.com/advisor/education/what-is-international-law/>> accessed 1 September,2023

¹⁶ Saeideh Feizabadi, “eRepo - Transboundary Oil Pollution and International Law” (eRepo - Transboundary Oil Pollution and International Law, December 31, 2018) 14

¹⁷ Uche N, “What Is International Law? Everything You Need To Know” (Forbes Advisor, November 21, 2022) <<https://www.forbes.com/advisor/education/what-is-international-law/>> accessed 1 September,2023

¹⁸ Saeideh Feizabadi, “eRepo - Transboundary Oil Pollution and International Law” (eRepo - Transboundary Oil Pollution and International Law, December 31, 2018) 14

¹⁹ Ibid

²⁰ Sands P, “Principles of International Environmental Law” (4th edn, Cambridge University Press, 2003) 05

²¹ Ottensoser M, “Oil Pollution on the High Seas: The Establishment of an International Regime to Deal with Public International Law and Private Law Issues and the Role of Non-State Actors in Their Resolution Prior to and at the 1969 International Legal Conference on Marine Pollution Damage (“Brussels Conference”)” (CUNY Academic Works) (2018) 07

Spring"²² in 1962, as well as the inaugural Earth Day in 1970, sparked global environmental awareness and advocacy.²³

2.1.1 International Environmental Law

International Environmental Law regulates state, individual, and international organization behavior in relation to the environment.²⁴ The Stockholm Conference in 1972 resulted in International Environmental Law.²⁵ International concerns such as the loss of ozone, temperature rise, deforestation, rainforest devastation, pollution of the oceans, threatened species commerce, hazardous waste, wetlands protection, oil spills, and radioactive pollution of the air are addressed by environmental laws.²⁶

The Stockholm Declaration (1972) and the Rio Declaration on Environment and Development (1992) are two major international environmental declarations. The Stockholm Declaration measured global human impact on the environment and aimed for preservation and enhancement.²⁷ The Rio Declaration systematized normative expectations and emphasized the legal and political underpinnings of sustainable development.²⁸ Stockholm Principle 21 and Rio Principle 2 emphasize the state's responsibility to prevent environmental harm, ensuring activities within control do not cause damage to other states or areas beyond national jurisdiction.²⁹

The most important thing for this study will be to define the boundary of the sea and determine which party will be responsible for sea pollution in that boundary. In addition, we have to determine what the conventions have laid down and how effective it is when the pollution is in the high sea.

²² Boslaugh SE, "Silent Spring" Encyclopædia Britannica (26 July 2023)

<<https://www.britannica.com/topic/Silent-Spring>> accessed 1 September, 2023

²³ Ottensoser M, "Oil Pollution on the High Seas: The Establishment of an International Regime to Deal with Public International Law and Private Law Issues and the Role of Non-State Actors in Their Resolution Prior to and at the 1969 International Legal Conference on Marine Pollution Damage ("Brussels Conference")" (CUNY Academic Works) (2018) 07

²⁴ "International Environmental Law" (LII / Legal Information Institute)

<https://www.law.cornell.edu/wex/international_environmental_law> accessed 1 September, 2023

²⁵ "Guides: International Environmental Law Research Guide: Introduction" (Introduction - International Environmental Law Research Guide - Guides at Georgetown Law Library, July 14, 2023)

<<https://guides.ll.georgetown.edu/InternationalEnvironmentalLaw/introduction>> accessed 1 September, 2023

²⁶ Ibid

²⁷ United Nations "Stockholm Declaration, 1972" (5-16 June, 1972)

<<https://www.un.org/en/conferences/environment/stockholm1972>> accessed 13 September, 2023

²⁸ United Nations "Rio de Janeiro earth summit" (1992)

<<https://www.un.org/en/conferences/environment/rio1992>> accessed 13 September, 2023

²⁹ Ibid

2.1.2 Territorial Integrity and Sovereignty

Establishing sovereignty and territorial integrity is crucial for dealing with significant high sea pollution. UN Charter establishes state sovereignty through Article 2(1) affirmation-

*“The Organization is based on the principle of the sovereign equality of all its Members.”*³⁰

The Charter emphasized States' freedom from external interference and peaceful dispute resolution to protect international peace and security.³¹ State sovereignty cannot be practiced in isolation; the actions of one state influence the rights of another.³² Oppenheim states that a State cannot alter its territory's natural conditions to disadvantage neighboring states.³³ State sovereignty doesn't imply that the state is above the law; international law helps resolve conflicts within states, despite challenges.³⁴ A sovereign state must control benefits within its territory, including water bodies, as established by UNCLOS.³⁵

2.1.3 State Responsibility

State obligated to compensate foreign nationals for injuries.³⁶ State responsibility is a classic method for addressing customary international law violations.³⁷ State seeks redress for environmental injuries if breach or non-performance is imputable and damage occurred.³⁸ Breach of an international obligation entails international accountability.³⁹ State responsibility

³⁰ “Chapter I: Article 2(1)–(5) — Charter of the United Nations — Repertory of Practice of United Nations Organs — Codification Division Publications” (Chapter I: Article 2(1)–(5) — Charter of the United Nations — Repertory of Practice of United Nations Organs — Codification Division Publications, June 30, 2023) <<http://legal.un.org/repertory/art2.shtml>> accessed 1 September, 2023

³¹ Mendis C. “Sovereignty Vs. Trans-Boundary Environmental Harm: The Evolving International Law Obligations and the Sethusamuduram Ship Channel Project” (Docslib) <<https://docslib.org/doc/650475/sovereignty-vs-trans-boundary-environmental-harm-the-evolving-international-law-obligations-and-the-sethusamuduram-ship-channel-project>> accessed 1 September, 2023

³² Ibid

³³ Akehurst, Michael. “Jurisdiction in international law.” Brit. YB Int’l L. 46 (1972): 145.

³⁴ Malcom N Shaw “Introduction to International Law” (8th edn, Cambridge University Press, 1977) 03

³⁵ Saeideh Feizabadi, “eRepo - Transboundary Oil Pollution and International Law” (eRepo - Transboundary Oil Pollution and International Law, December 31, 2018) 17

³⁶ Philippe Sands “The Institute of International Law: Resolution on Responsibility and Liability under International Law for Environmental Damage” (1998) 7 Review of European Community & International Environmental Law 99 <<http://dx.doi.org/10.1111/1467-9388.00134>> accessed 1 September, 2023

³⁷ Ibid

³⁸ “Yearbook of the International Law Commission | United Nations iLibrary” (Yearbook of the International Law Commission | United Nations iLibrary, January 1, 1945) <<https://www.un-ilibrary.org/content/series/24121525>> accessed 1 September, 2023

³⁹ “Relationship between State and Individual Responsibility” (Relationship between State and Individual Responsibility) <<https://www.lawteacher.net/free-law-essays/international-law/the-elements-of-state-responsibility-international-law-essay.php>> accessed 1 September, 2023

involves ensuring citizens' safety from another state.⁴⁰ However, this responsibility includes in mitigating the disaster of high sea pollution as well. Because when one country pollutes the deep sea, that victim country has the right to prevent its harmful effects from appearing in other countries. State responsibility also determines international obligation breach and consequences.⁴¹

Sands argues pollution may cause environmental damage, but not all damage leads to state liability.⁴² Environmental damage liability arises from breaching international legal obligations, treaties, customary rules, or general principles.⁴³

International law states that responsible states are liable for reparations to injured states, as it is a fundamental principle. The Chorzow Factory case highlights international law's principle of obligation to make reparation for engagement breaches.⁴⁴ In this study, reparation refers to a state's accountability for a violation that results in significant loss to an individual or community.

2.1.4 Marine Environment and Pollution

Treaties and conventions attempt to protect the marine environment from the negative consequences of oil extraction and transportation, which are frequently transboundary due to sea movement and the lack of boundaries between nations.⁴⁵ Gulf of Mexico oil spill highlights marine environmental impact.⁴⁶ Countries have signed into environmental law treaties to mitigate dangers such as the Gulf of Mexico disaster, giving legal recourse through international law tribunals like the ICJ.⁴⁷

“MARPOL” and “UNCLOS” are progressive measures to safeguard the marine environment.⁴⁸

The mandate says of OILPOL and UNCLOS to protect the marine environment from dangers.⁴⁹

⁴⁰ Saeideh Feizabadi, “eRepo - Transboundary Oil Pollution and International Law” (eRepo - Transboundary Oil Pollution and International Law, December 31, 2018) 18

⁴¹ Law Teacher “Relationship between State and Individual Responsibility” (Relationship between State and Individual Responsibility) <<https://www.lawteacher.net/free-law-essays/international-law/the-elements-of-state-responsibility-international-law-essay.php>> accessed 1 September, 2023

⁴² Sands P, “Principles of International Environmental Law” (4th edn, Cambridge University Press, 2003) 111

⁴³ Ibid

⁴⁴ Chorzow Factory (Indemnity) case (1928), PCIJ Series A No 17, ICGJ 255 (PCIJ 1928)

⁴⁵ Saeideh Feizabadi, “eRepo - Transboundary Oil Pollution and International Law” (eRepo - Transboundary Oil Pollution and International Law, December 31, 2018) 18

⁴⁶ BOEM “Oil and Gas - Gulf of Mexico | Bureau of Ocean Energy Management” (Oil and Gas - Gulf of Mexico | Bureau of Ocean Energy Management) <<https://www.boem.gov/regions/gulf-mexico-ocs-region/oil-and-gas-gulf-mexico>> accessed 1 September, 2023

⁴⁷ Saeideh Feizabadi, “eRepo - Transboundary Oil Pollution and International Law” (eRepo - Transboundary Oil Pollution and International Law, December 31, 2018) 19

⁴⁸ Ibid

⁴⁹ Ibid

States must address marine pollution, including transboundary and high sea oil pollution, under the convention's provisions.

Canada is interested in UNCLOS Article 234, Section 8, targeting ice-covered coastal states for domestic pollution rules, as marine pollution can cause irreversible ecological damage.⁵⁰ Article 194 (12) highlights the responsibility of states to avoid pollution from activities under their jurisdiction or control, to ensure damage to other states and the environment, and to prevent pollution from spreading beyond sovereign rights zones and it is one of the most important references to the marine environment.⁵¹

2.2 The Evolving International Environmental Law Obligation

Understanding environmental law obligations requires examining international law sources and basic issues. Evolving international law obligations involve the development of laws to address new challenges and norms, such as climate change, resulting in new standards and agreements like the Paris Agreement.⁵² Article 38(1) of the International Court of Justice addresses resources of international law, such as international conventions, customs, legal principles, judicial decisions, and publicist doctrines. The function of the court is to resolve disputes in conformity with international laws, with no binding effect other than between members.⁵³

2.2.1 Conventions or Treaties

Treaties are vital in the advanced world because of the rapid global developments.⁵⁴ Treaties facilitate agreements in a rapidly changing world, addressing emerging legal issues and requiring new global legislation to prevent chaos and conflicts.⁵⁵ When a treaty has been accepted, brought into effect, acknowledged by parties, and ratified to regional legislation, it becomes law.⁵⁶ There are various types of International treaties for maritime pollution which is now in force for mitigating the rate of pollution. And one is 1969 Intervention Convention which had been created for mitigating the risk of oil pollution in high sea. Extensive agreements

⁵⁰ Ibid

⁵¹ Saeideh Feizabadi, “eRepo - Transboundary Oil Pollution and International Law” (eRepo - Transboundary Oil Pollution and International Law, December 31, 2018) 19

⁵² Ibid

⁵³ ICJ “Statute of the Court Of Justice | INTERNATIONAL COURT OF JUSTICE” (Statute of the Court Of Justice | INTERNATIONAL COURT OF JUSTICE) <<https://icj-cij.org/statute>> accessed 1 September, 2023

⁵⁴ Saeideh Feizabadi, “eRepo - Transboundary Oil Pollution and International Law” (eRepo - Transboundary Oil Pollution and International Law, December 31, 2018) 26

⁵⁵ Ibid

⁵⁶ Ibid

between states result in conformity in state practice, transforming a subject into customary international law.⁵⁷

2.2.2 Customary International law

Unwritten customs regularly govern people's lives in modern society, and they frequently become recognized norms of behavior. Until accords and conventions became more important, customary law was the fundamental source of international law.⁵⁸ Customs are obligations to society members, requiring state practices to understand customary law.⁵⁹ Developing the practice of states and opinion juris in international environmental law, particularly high sea pollution, is critical for the development of an unwritten code. For state practice, one customary principle has an efficient role and that is “No Harm” principle. No-harm rule; international customary law principle requiring states to prevent, reduce, and control environmental harm.⁶⁰

Lawyers contend that customary international law lacks sovereignty, depriving governments the right to exploit territories in sensitive situations.⁶¹ The Trail Smelter Case is critical to the advancement of International Environmental Law.⁶² The arbitral tribunal ruled that no state can use its territory to cause injury by fumes to another's territory or property unless it is of serious consequence and established by clear and convincing evidence.⁶³ This case, not based on maritime oil pollution, is crucial in environmental law evolution.⁶⁴ Although Canada accepted liability for environmental harm in the US, the tribunal was tasked with compensating damages.⁶⁵ The case demonstrates that domestic laws can also apply to international legal issues, highlighting the importance of considering international law in environmental law.⁶⁶ High sea oil pollution cases are governed by abovementioned applicable legal sources, ensuring fair and just judgments in legal cases.

⁵⁷ Ibid

⁵⁸ Sands P, “Principles of International Environmental Law” (4th edn, Cambridge University Press, 2003) 119

⁵⁹ Ibid

⁶⁰ UN environment programme “No Harm Rule | UNEP Law and Environment Assistance Platform” (no harm rule | UNEP Law and Environment Assistance Platform) <<https://leap.unep.org/knowledge/glossary/no-harm-rule>> accessed 1 September, 2023

⁶¹ Saeideh Feizabadi, “eRepo - Transboundary Oil Pollution and International Law” (eRepo - Transboundary Oil Pollution and International Law, December 31, 2018) 29

⁶² Mahawar S, “Trail Smelter Case: An Analysis - iPleaders” (iPleaders, November 16, 2021) <<https://blog.iplayers.in/trail-smelter-case-analysis/>> accessed 1 September, 2023

⁶³ Ibid

⁶⁴ Ibid

⁶⁵ Ibid

⁶⁶ Ibid

2.2.3 The Formation of Brussels Conference

The Torrey Canyon oil spill led to the establishment of an international regime to address marine oil pollution, legal questions, and compensation for victims.⁶⁷ The Brussels Conference codified a new body of international law, mandating compensation in the millions for those injured by marine oil spills, rather than focusing on academic discussions or technical guidelines.⁶⁸ The regime would rely on the world oil trade's economics, imposing liability on ship owners, insurers, and cargo interests.⁶⁹

2.3 Conclusion

This chapter discusses environmental law, particularly maritime oil pollution, and its legal basis in international law. It highlights the protection of states through sovereignty and territorial integrity, as well as the concept of state responsibility and liability in treaties and conventions.

⁶⁷ Ottensoser M, "Oil Pollution on the High Seas: The Establishment of an International Regime to Deal with Public International Law and Private Law Issues and the Role of Non-State Actors in Their Resolution Prior to and at the 1969 International Legal Conference on Marine Pollution Damage ("Brussels Conference")" (CUNY Academic Works) (2018) 94

⁶⁸ Ottensoser M, "Oil Pollution on the High Seas: The Establishment of an International Regime to Deal with Public International Law and Private Law Issues and the Role of Non-State Actors in Their Resolution Prior to and at the 1969 International Legal Conference on Marine Pollution Damage ("Brussels Conference")" (CUNY Academic Works) (2018) 94

⁶⁹ Ibid

Chapter 3

Historical Background, Incidents of Oil Pollution and International Legal Framework

The first part of this chapter will discuss the historical context of oil spills with some incidents. Then, the second part of it will discuss about the various conventions and treaties, the notable ones being the “UNCLOS”, “MARPOL” etc. However, the main purpose of this section will be to discuss in detail about the treaty of “1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties” and to mention which provisions have always played a role in preventing marine pollution.

3.1 Historical Context of High Sea Pollution and Oil Spills

For thousands of years, humans used petroleum oil in medicine and weapons of war. Extraction of oil from the ground and transportation to refineries and beyond periodically leaks oil into the environment due to old and damaged equipment, human mistake, and poor luck. Tens of millions of gallons of oil have been spilled, resulting in oiled coasts, ruined aquaculture, dead and injured wildlife, and lost tourism profit. Undoubtedly, understanding the historical context of maritime pollution and oil spills is critical for comprehending the requirement for international treaties such as the “1969 International Convention Relating to Intervention in Cases of Oil Pollution Casualties”.

3.1.1 Overview of Notable Oil Spill Incidents and Their Consequences

A. The Persian Gulf War Oil Spill

This was the largest oil spills in the world, but this was not an accident rather the Iraqi forces released about 100 million gallons of oil into the sea waters of Kuwait before the end of hostilities. The Gulf War, commonly known as the Persian Gulf War, started on August 2, 1990, when Saddam Hussein commanded the occupation of Kuwait and lasted on February 28, 1991, when Saddam Hussein was defeated. It has been reported that up to eighty ships transporting oil and weaponry sank in the Arabian Gulf. This disrupted every aspect of the

ecosystem, largely killing marine life. Many birds that migrate were killed, and many marine turtles died or acquired bleeding ulcers. The land where the battle took place became barren.⁷⁰

B. Deepwater Horizon (2010)

This accident in the waters of the Gulf of Mexico is regarded as one of the worst environmental disasters in history.⁷¹ Over several months, an explosion on the Deepwater Horizon oil rig resulted in the release of almost 4.9 million barrels (approximately 210 million gallons) of oil.⁷² The spill had serious environmental implications, affecting marine life, coastal ecosystems, and the fishing and tourism sectors.⁷³ In addition, the disaster sparked considerable litigation, regulatory revisions, and discussions about offshore drilling safety.⁷⁴

C. The Torrey Canyon Disaster (1967)

The Torrey Canyon tragedy was one of the most major instances that showed the necessity for worldwide cooperation to mitigate oil leaks.⁷⁵ The supertanker Torrey Canyon capsized off the coast of Cornwall, England, in 1967, spewing approximately 120,000 tons of crude oil into the water.⁷⁶ The accident had serious ecological and economic ramifications, highlighting the potential destruction caused by oil leaks.

These disasters highlight the devastation caused by oil spills on marine ecosystems, wildlife, economy, and local communities. They also emphasize the importance of global pacts and frameworks of law.

3.2 Regulatory Legal Framework for Preventing the High Sea Pollution

Offshore oil pollution regulatory regimes are critical for ensuring sustainable and responsible oil exploitation while avoiding environmental impact. These frameworks include rules, regulations, and guidelines that control offshore oil operations such as drilling, production, transportation, and spill response. They often involve government agencies, international agreements, industry standards, and environmental protection measures to prevent and

⁷⁰ John P. Rafferty “9 of the Biggest Oil Spills in History” Encyclopædia Britannica (September 1, 2023) <<https://www.britannica.com/list/9-of-the-biggest-oil-spills-in-history>> accessed 5 September, 2023

⁷¹ Ibid

⁷² Ibid

⁷³ Ibid

⁷⁴ Ibid

⁷⁵ Ottensoser M, “Oil Pollution on the High Seas: The Establishment of an International Regime to Deal with Public International Law and Private Law Issues and the Role of Non-State Actors in Their Resolution Prior to and at the 1969 International Legal Conference on Marine Pollution Damage (“Brussels Conference”)” (CUNY Academic Works) (2018) 37

⁷⁶ Ibid

minimize oil spills, protect marine ecosystems, and hold accountable parties for any pollution occurrences. Oil spill prevention and response efforts have improved substantially over the years, owing to international agreements and environmental restrictions. However, monitoring huge marine expanses and enforcing compliance remain enormous issues.

Offshore oil spills usually cause environmental harm outside of national boundaries, and it is critical that states work together to ensure that such concerns are addressed properly within the law.⁷⁷ “The International Regulators Forum” was founded in 1994 with the goal of collaborating to advance the safety and health sector through cooperative programming and information sharing.⁷⁸ When it comes to marine pollution, it is being discovered and stated repeatedly there is no alone rule that is applicable to all nations, and that such issues are covered by various agreements and bilateral treaties, as well as other sources of international law that are public in nature such as general principles and customary international law.⁷⁹

Despite the multiple problems faced in this area, initiatives have been taken, and nations have reached a number of accords requiring governments to establish and enforce restrictions that would limit such oil spills and hence oil pollution.⁸⁰ One of the first approaches to ensuring control of intentional discharge was the de-alienation of specific locations where such discharges could occur away from all countries' coastlines, with the argument that the harmful effects would have dissipated by the time the oil mixed with water reached the main coastlines.⁸¹

“OILPOL” and “MARPOL” have precisely defined zones that are considered to require special protection and sites where tankers can discharge, as stated in the treaties.⁸² There are restrictions to the possible discharges inside the zones designated by the agreements, and discharges outside of the "safe zones" are forbidden.⁸³ “MARPOL” and “OILPOL” additionally implemented the concept of limiting the total quantity of cargo every journey to a particular level in order to reduce the overall amount of oil discharged at sea, not only those that sail to the designated zones.⁸⁴ “The 1954 International Convention for the Prevention of

⁷⁷ Saeideh Feizabadi, “eRepo - Transboundary Oil Pollution and International Law” (eRepo - Transboundary Oil Pollution and International Law, December 31, 2018) 35

⁷⁸ Ibid

⁷⁹ Ibid

⁸⁰ Ibid

⁸¹ Ibid

⁸² Ibid

⁸³ Ibid

⁸⁴ Ibid

Pollution of the sea by Oil” also another treaty which also works for controlling the exploration of oil in the high sea and trying to reduce the amount of pollution of the high sea. A case in point for the legal framing of this study is the Torrey Canyon accident of 1967. Because after this accident the basic convention of this research named “1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties” has been developed.

3.2.1 Regulations of UNCLOS Regarding Prevention of High Sea Pollution by Oil

UNCLOS is an abbreviation for “the United Nations Convention on the Law of the Sea”.⁸⁵ UNCLOS offers a comprehensive legal framework for the use and management of the world's oceans and their resources. The treaty addresses a wide range of topics, including territorial seas, exclusive economic zones, continental shelf, high seas, navigation rights, marine resource protection, and others. Therefore, we need to discuss about this convention, in particular, the provisions that play a vital role in preventing high-sea pollution will be identified and described in this part.

“The UN Convention on the Law of the Sea” (UNCLOS) plays an important role in reducing high seas oil pollution by establishing laws and regulations that promote responsible ocean usage and the conservation of the marine environment. UNCLOS provides rules for the prevention and management of ship pollution, especially oil pollution. **Part XII of “the UN Convention on the Law of the Sea”** tackles the protection and preservation of the maritime environment.⁸⁶ **Article 206 of the UNCLOS** provides-

“When States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment and shall communicate reports of the results of such assessments in the manner provided in article 205.”⁸⁷

That means if any country realizes that its activities are likely to cause pollution of the sea, then it should take measures very quickly so that there is no serious damage to the sea. Then another provision of **Article 211 of the UNCLOS** provides-

⁸⁵ Maritime Manual “What Is UNCLOS? Role, Duty & Jurisdiction [2023]” (Maritime Manual, 15 April 2021) <<https://www.maritimemanual.com/what-is-unclos/>> accessed 15 August, 2023

⁸⁶ United Nations Convention on the Law of the Sea, 1982 (adopted 10 December, 1982, entered into force 16 November, 1994)

⁸⁷ Ibid Article 206

“States, acting through the competent international organization or general diplomatic conference, shall establish international rules and standards to prevent, reduce and control pollution of the marine environment from vessels and promote the adoption, in the same manner, wherever appropriate, of routing systems designed to minimize the threat of accidents which might cause pollution of the marine environment, including the coastline, and pollution damage to the related interests of coastal States. Such rules and standards shall, in the same manner, be re-examined from time to time as necessary.”⁸⁸

UNCLOS forbids the intentional or negligent discharge of dangerous substances, particularly oil, into the maritime environment. It requires ships to adhere to rigorous laws addressing the discharge of pollutants, including oil, and states to create and implement regulations to prevent unauthorized discharges. Besides these, the "flag state" (the country under whose flag a ship is registered) is responsible under UNCLOS for ensuring that ships flying its flag comply with international standards, especially those relating to pollution control.⁸⁹ This pushes countries to regulate and monitor their ships in order to avoid oil spills and other forms of pollution.⁹⁰

Overall, UNCLOS establishes a comprehensive framework for avoiding and responding to oil pollution in the high seas and other maritime areas. Its regulations encourage states and vessel operators to act responsibly in order to protect the marine environment from the adverse impacts of oil pollution.

3.2.2 Regulations of (MARPOL) Regarding Prevention of High Sea Pollution by Oil

MARPOL is an acronym for “the International Convention for the Prevention of Pollution from Ships”, which is one of the most important international treaties addressing various forms of maritime pollution generated by ships. “The International Maritime Organization” (IMO) adopted the convention, which went into effect on October 2, 1983.⁹¹ “The International Convention for the Prevention of Pollution from Ships”, or MARPOL, plays an essential part in reducing high seas oil pollution by creating comprehensive regulations and standards for ships to minimize the discharge of oil and oily chemicals into the maritime environment. Here's how MARPOL helps to prevent high-seas oil contamination-

⁸⁸ United Nations Convention on the Law of the Sea, 1982 (adopted 10 December, 1982, entered into force 16 November, 1994) Article 211

⁸⁹ Ibid Article 212

⁹⁰ Ibid

⁹¹ IMO, “International Convention for the Prevention of Pollution From Ships (MARPOL)” (International Maritime Organization) <[https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-\(MARPOL\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx)> accessed 15 August, 2023

1. Annex I - Prevention of Pollution by Oil:

- a. **Oil Discharge Limits:** MARPOL Annex I imposes severe limits on the discharge of oil and greasy water from ships. It requires that the oil content of discharged water be below certain thresholds in order to prevent contamination.⁹²
- b. **Oil Filtering and Separation Equipment:** According to the agreement, ships must have oil filtering and separation equipment to separate oil from water before discharge. This assures that only treated water enters the sea.⁹³
- c. **Oil Residue Protocols:** Ships must follow certain protocols for dealing with oil residues and sludges. To avoid unintentional spills, these processes include correct storage, handling, and disposal of such leftovers.⁹⁴

2. **Port Reception Facilities:** MARPOL requires ports to provide facilities for receiving oily wastes and residues created by ships. This encourages proper disposal on land, preventing oil waste from being dumped into the water.⁹⁵

3. **Flag State Oversight:** Each country (flag state) is required under MARPOL to enforce the convention's requirements on its registered ships. It is the responsibility of flag nations to ensure that ships under their jurisdiction conform with the annexes, especially Annex I.⁹⁶

4. **IMO Oversight:** The International Maritime Organization (IMO) oversees MARPOL implementation and tries to enhance its laws over time, taking into account technological improvements and best practices.⁹⁷

5. **Reduction of Potential Accidents:** MARPOL contributes to the general decrease of oil leaks caused by accidents or mishaps by enforcing tight standards for the design, building, and operation of oil tankers and ships.⁹⁸

Overall, MARPOL Annex I plays an important role in reducing high seas oil pollution by developing a complete framework of rules and regulations that encourage safe ship and marine

⁹² Amendments to the Annex of the Protocol of 1978 relating to the International Convention for the prevention of pollution from ships, 1973 (Amendments to regulation 10 and new regulation 25A of Annex I of MARPOL 73/78) (adopted 25 September, 1997, entered into force 1 February, 1999) 2057 UNTS

⁹³ Ibid

⁹⁴ Ibid

⁹⁵ Ibid

⁹⁶ Ibid

⁹⁷ Ibid

⁹⁸ Ibid

industry behavior. It guarantees that ships limit the risk of oil pollution by handling, treating, and disposing of oil and oily substances properly.

3.2.3 Regulations of “1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties” Regarding Prevention of High Sea Pollution by Oil

The International Maritime Organization (IMO) adopted this convention, also known as the "Intervention Convention" on November 29, 1969, in response to concerns about the increasing risk of oil pollution from ships and the need for a coordinated international response in the event of an oil pollution incident on the high seas.⁹⁹ A marine casualty is defined by the Intervention Convention as a collision, navigational event, or other occurrence that causes material damage or an impending hazard to a ship or cargo.¹⁰⁰ The fundamental goal of the Intervention Convention is to develop a framework for international cooperation and aid in circumstances of high-seas oil pollution crises.¹⁰¹ Key provisions of the convention include:

1. Notification and Request for Assistance: The convention establishes procedures for notifying other countries and international organizations about oil pollution incidents on the high seas. It also outlines the process for requesting assistance from other states in dealing with such incidents.¹⁰²

2. Cooperation and Assistance: The convention emphasizes the importance of international cooperation and assistance in responding to oil pollution incidents. It encourages states to provide necessary resources, expertise, and equipment to assist affected countries.¹⁰³

3. Designated National Authority: Each country is required to designate a national authority responsible for coordinating responses to oil pollution incidents on its own territory or in its territorial waters.¹⁰⁴

⁹⁹ IMO “International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969” <<https://www.imo.org/en/About/Conventions/Pages/International-Convention-Relating-to-Intervention-on-the-High-Seas-in-Cases-of-Oil-Pollution-Casualties.aspx>> accessed 15 August, 2023

¹⁰⁰ “Intervention Convention” (Intervention Convention – Capt.S.S.Chaudhari, August 19, 2021) <<https://captsschaudhari.com/2021/08/19/intervention-convention/>> accessed 15 August, 2023

¹⁰¹ Ibid

¹⁰² International Convention relating to intervention on the high seas in cases of oil pollution casualties (adopted 29 November, 1969, entered into force 6 May, 1975) 970 UNTS Article III(b)

¹⁰³ Ibid Article III

¹⁰⁴ Ibid Article X

4. Liability and Costs: The convention addresses liability and compensation issues, clarifying that states providing assistance are not liable for damages resulting from their assistance efforts. It also outlines provisions for cost-sharing in cases where multiple states provide assistance.¹⁰⁵

5. Protection of Personnel and Equipment: The convention includes provisions to protect personnel and equipment involved in response efforts and provides for their safe and unimpeded passage.¹⁰⁶

The 1969 Intervention Convention was an important step in establishing a legal framework for international cooperation in responding to oil pollution incidents on the high seas.

3.3 Conclusion

From this chapter, it is understood that various conventions or treaties are trying to reduce the amount of high sea pollution with its own provisions. In this discussion, we delved historical context of the oil spills with some incidents. Particular attention has been paid to the provisions of the 1969 Intervention Convention. Because in the next chapter we will discuss in detail about the impact of this convention in reducing high sea pollution. An attempt will be made to show how successful this convention has been in preventing high sea pollution through oil.

¹⁰⁵ International Convention relating to intervention on the high seas in cases of oil pollution casualties (adopted 29 November, 1969, entered into force 6 May, 1975) 970 UNTS Article VI

¹⁰⁶ Ibid Article III(e)

Chapter 4

Effectiveness of the treaty “1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties” for Preventing Pollution of High Sea through Oil Spills

The previous chapter showed the historical background of oil spills and some incidents by which it is found about the dangerous consequence of the oil spills. Then that chapter discussed the legal framework for controlling the rate of oil pollution in the high sea. Now in this chapter, the research will discuss about background leading to the negotiation of the Convention, debates surrounding the Convention's adaptability to modern challenges, strength and weakness of this convention to mitigate the pollution rate and determine the extent of success and limitation of this convention.

4.1 Evolution and Development of the 1969 Intervention Convention

“The 1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties”, commonly referred to as the "Intervention Convention," was an important turning point in international efforts to handle high-seas oil pollution disasters.¹⁰⁷ Its evolution was impacted by a number of circumstances and experiences that showed the importance of a coordinated response to oil spills.

4.1.1 Negotiation of the Convention

Since this dissertation intends to discuss the role of “1969 Intervention Convention”, it is necessary to comprehend the background of negotiations for finalizing the draft of mentioned convention. Thirty million gallons of oil were spilled when the Torrey Canyon became bogged off the English coast in 1967.¹⁰⁸ The ship had been licensed under the Liberian flag, and the catastrophe occurred outside the United Kingdom's territorial sea, posing the question of whether a coastal nation might intervene to remedy a pollution incident that occurred in areas outside national jurisdiction.¹⁰⁹ After this accident, the world realized, it needs another

¹⁰⁷ Ottensoser M, “Oil Pollution on the High Seas: The Establishment of an International Regime to Deal with Public International Law and Private Law Issues and the Role of Non-State Actors in Their Resolution Prior to and at the 1969 International Legal Conference on Marine Pollution Damage (“Brussels Conference”)” (CUNY Academic Works) (2018) 57

¹⁰⁸ Ibid

¹⁰⁹ Sands P, “Principles of International Environmental Law” (4th edn, Cambridge University Press, 2003) 501

regulatory framework for mitigating the risk and dangerous consequences of oil pollution disaster. The magnitude of the environmental damage, along with the lack of an organized international response, highlighted weaknesses in current legal frameworks for dealing with oil pollution on the high seas.¹¹⁰ The Torrey Canyon tragedy demonstrated the transboundary aspect of oil pollution.¹¹¹ Oil spills on the high seas may damage numerous countries' coastlines, necessitating the establishment of global collaboration and intervention structures.¹¹² The Torrey Canyon accident received extensive media coverage and sparked broad public concern.¹¹³ This resulted in the 1969 Brussels Conference and the approval of the “1969 Intervention Convention”.¹¹⁴

4.1.2 Debates Surrounding the Convention's Adaptability to Modern Challenges

Scholars and experts have debated whether the Convention's provisions effectively address contemporary challenges as the maritime and environmental situation has evolved. Debates started from emergence of new pollutants. Although the Convention focuses on oil pollution, discussions have expanded to include dangerous substances such as chemicals and liquefied natural gas.¹¹⁵ Then another debate highlighted that technological advancements where advances in maritime technology improve vessels, communication systems, and spill response techniques; convention norms must be updated to be effective.¹¹⁶ Again critics argued that the Convention may fail to address the special obstacles of reacting to spills in ice-covered seas, as well as the possibility of long-term environmental consequences.¹¹⁷

Debates on the adaptability of the Convention reflect increasing marine operations, environmental awareness, and technological breakthroughs in tackling high sea oil pollution concerns.

¹¹⁰ Sands P, “Principles of International Environmental Law” (4th edn, Cambridge University Press, 2003) 501

¹¹¹ Ibid

¹¹² Ibid

¹¹³ Ottensoser M, “Oil Pollution on the High Seas: The Establishment of an International Regime to Deal with Public International Law and Private Law Issues and the Role of Non-State Actors in Their Resolution Prior to and at the 1969 International Legal Conference on Marine Pollution Damage (“Brussels Conference”)” (CUNY Academic Works) (2018) 37

¹¹⁴ Sands P, “Principles of International Environmental Law” (4th edn, Cambridge University Press, 2003) 501

¹¹⁵ Ibid

¹¹⁶ Ibid

¹¹⁷ Ibid

4.1.3 Comparison between the 1969 Convention and Other Legal Instruments

1. MARPOL and 1969 Intervention Convention: MARPOL tackles a variety of maritime pollution sources, such as oil, chemicals, sewage, and rubbish while the 1969 Convention focuses solely on oil pollution.¹¹⁸ However, the applicability of MARPOL within exclusive economic zones (EEZs) limits its scope in combating excessive sea pollution.¹¹⁹

2. CLC 1969 and Fund Convention: The International Convention on Civil Liability for Oil Pollution Damage (CLC) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Convention) collaborate to establish a liability and compensation regime for incidents involving ships that cause oil pollution.¹²⁰ These conventions, which address the financial implications of pollution damage, supplement the 1969 Intervention Convention.¹²¹

3. UNCLOS and 1969 Intervention Convention: The “UN Convention on the Law of the Sea” (UNCLOS) is the overall legal framework for marine affairs.¹²² While not specific to pollution occurrences, the “UN Convention on the Law of the Sea” specifies governments' rights and obligations in maritime areas, laying the groundwork for the formulation and execution of pollution-related accords.¹²³

4.2 Effectiveness and Limitations

The Intervention Convention of 1969 was a crucial international agreement to address oil pollution on the high seas, establishing a framework for international cooperation. The Convention gives coastal governments the authority to take the necessary measures on the high seas to avoid, reduce, or abolish the hazards of oil contamination caused by ships colliding.¹²⁴ After consulting with relevant parties such as flag states, ship owners, and independent experts,

¹¹⁸ Sands P, “Principles of International Environmental Law” (4th edn, Cambridge University Press, 2003) 501

¹¹⁹ Ibid

¹²⁰ Steen A and others, “Global Challenges to Preparedness and Response Regimes” (Allen Press, April 1, 2003) <<https://dx.doi.org/10.7901/2169-3358-2003-1-29>> accessed 10 August, 2023

¹²¹ Ibid

¹²² Birnie P and Boyle A, “International Law and the Environment” (3rd edn, Oxford University Press, 2002) 387

¹²³ Ibid

¹²⁴ International Maritime Organization “International Convention Relating to intervention on the high seas in cases of oil pollution casualties, 1969” <<https://www.imo.org/en/About/Conventions/Pages/International-Convention-Relating-to-Intervention-on-the-High-Seas-in-Cases-of-Oil-Pollution-Casualties.aspx>> accessed 6 September, 2023

the coastal State is entitled to take the required actions.¹²⁵ Any activities that exceed the permissible limits are subject to compensation.¹²⁶

4.2.1 Ratification and Accession to the Convention by States

The 1969 International Convention on High Sea Intervention for Oil Pollution Casualties has undergone varying degrees of ratification and state accession since its adoption. According to Article XI of the 1969 Intervention Convention, it is stated:

“The present Convention shall enter into force on the ninetieth day following the date on which Governments of fifteen States have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization” and “For each State which subsequently ratifies, accepts, approves or accedes to it the present Convention shall come into force on the ninetieth day after deposit by such State of the appropriate instrument.”¹²⁷

So, after 90th day of ratification and accession of the convention, it shall come into force in a party nation. About 78 countries are the parties of this Intervention Convention.¹²⁸

4.2.2 Challenges and Successes in Enforcing the Convention

The 1969 International Convention on Intervention on the High Seas has faced both challenges and successes, reflecting the complexities of addressing high sea oil pollution.

A. Successes in Enforcing the Convention

The public law treaty empowers governments to intervene on the high seas to prevent oil pollution, in the aftermath of a maritime casualty, or in acts inflicting severe harm, safeguarding the safety of the nation's coastline and interests. The Convention established a legal framework for states to collaborate in high sea oil pollution cases, guiding international responses to incidents. The right to intervene against a vessel necessitates interaction with affected states, the participation of impartial experts, and the notification of any affected citizens in the coastal state.¹²⁹ If consultation or notification is not provided, the threatened coastal State can act

¹²⁵ Ibid

¹²⁶ Ibid

¹²⁷ International Convention relating to intervention on the high seas in cases of oil pollution casualties (adopted 29 November, 1969, entered into force 6 May, 1975) 970 UNTS Article XI (1) and (2)

¹²⁸ International Maritime Organization “International Convention Relating to intervention on the high seas in cases of oil pollution casualties, 1969” <<https://www.imo.org/en/About/Conventions/Pages/International-Convention-Relating-to-Intervention-on-the-High-Seas-in-Cases-of-Oil-Pollution-Casualties.aspx>> accessed 6 September, 2023

¹²⁹ International Convention relating to intervention on the high seas in cases of oil pollution casualties (adopted 29 November, 1969, entered into force 6 May, 1975) 970 UNTS Article III(b)

unilaterally.¹³⁰ A new right under Public International Law allows a State to intervene proactively against oil pollution threats, resolving uncertainty for the British government regarding Torrey Canyon destruction.¹³¹ The Convention established liability and compensation principles for oil pollution incidents, ensuring polluters are held accountable and affected states and parties can seek compensation for damages. It was seen as an adequate attempt to safeguard the seas.¹³² The treaty mandates that ships carrying over two thousand tons of oil must maintain insurance to cover pollution damage liability under the convention.¹³³

B. Challenges in Enforcing the Convention

The Convention's enforcement mechanisms are insufficient, relying on states' cooperation and effective implementation, potentially causing variations in its enforcement and application.¹³⁴ States' differing interests in oil pollution response and liability can pose challenges, particularly when dealing with incidents involving multiple parties and potentially conflicting national priorities. The annex to the convention outlines conciliation and arbitration procedures, with the Soviet Union, Soviet Bloc, and Third World States opposing compulsory arbitration, while the US and Western Europe supported it.¹³⁵ Canada's move to protect the Arctic environment was driven by a broader concern about the law of the sea favoring shipping interests over coastal ones.¹³⁶ For this, Canada didn't join the Brussels regime after the conference. Even the American reaction to the Brussels Conference was less pronounced than that of Canada, yet it also reflects dissatisfaction with the outcome.¹³⁷ The treaty was criticized for being conservative and limited in its focus on oil rather than all toxins.¹³⁸ In 1973, International Organizations needed to adopt another convention named the "1973 Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil".¹³⁹ Smaller or less-developed states may struggle with enforcing the Convention's provisions due

¹³⁰Ibid

¹³¹ Ottensoser M, "Oil Pollution on the High Seas: The Establishment of an International Regime to Deal with Public International Law and Private Law Issues and the Role of Non-State Actors in Their Resolution Prior to and at the 1969 International Legal Conference on Marine Pollution Damage ("Brussels Conference")" (CUNY Academic Works) (2018) 37

¹³² Ibid

¹³³ Ibid

¹³⁴ Ibid

¹³⁵ Ibid

¹³⁶ Ibid

¹³⁷ Ibid

¹³⁸ Ibid

¹³⁹ International Maritime Organization "International Convention Relating to intervention on the high seas in cases of oil pollution casualties, 1969" <<https://www.imo.org/en/About/Conventions/Pages/International-Convention-Relating-to-Intervention-on-the-High-Seas-in-Cases-of-Oil-Pollution-Casualties.aspx>> accessed 6 September, 2023

to limitations in monitoring, response capabilities, and legal infrastructure.¹⁴⁰ The Convention's liability and compensation regime can be complex, especially in cases involving multiple parties, long-term environmental damage, or responsibility disputes, making determining damages and appropriate compensation challenging.¹⁴¹

4.2.3 Role of International Organizations

International organizations are instrumental in implementing the “1969 International Convention on Intervention on the High Seas in Oil Pollution Casualties”, providing expertise, coordination, technical assistance, and resources. Here’s some overview of their role to implement the convention-

A. International Maritime Organization (IMO): The International Maritime Organization (IMO) is a UN agency responsible for maritime affairs, promoting the implementation of the Convention on Maritime Pollution and developing international regulations.¹⁴² The International Maritime Organization (IMO) develops guidelines, facilitates information exchange, offers technical assistance, and conducts compliance assessments for states to prevent, respond to, and mitigate oil pollution.¹⁴³

B. International Oil Pollution Compensation Funds (IOPC Funds): International funds established under 1992 Protocols to the 1969 CLC and Fund Convention offer financial assistance to states affected by oil pollution incidents, supporting compensation and liability provisions.¹⁴⁴ The IOPC Funds manage compensation claims, ensure prompt payment, collaborate with states, and support cleanup and environmental restoration efforts following oil spills.¹⁴⁵

C. United Nations Environment Program (UNEP): UNEP is crucial in raising environmental awareness about oil pollution, promoting international cooperation, conducting research, facilitating policy development, and collaborating with states and organizations to

¹⁴⁰ Ibid

¹⁴¹ International Maritime Organization “International Convention Relating to intervention on the high seas in cases of oil pollution casualties, 1969” <<https://www.imo.org/en/About/Conventions/Pages/International-Convention-Relating-to-Intervention-on-the-High-Seas-in-Cases-of-Oil-Pollution-Casualties.aspx>> accessed 6 September, 2023

¹⁴² International Maritime Organization “International Convention Relating to intervention on the high seas in cases of oil pollution casualties, 1969” <<https://www.imo.org/en/About/Conventions/Pages/International-Convention-Relating-to-Intervention-on-the-High-Seas-in-Cases-of-Oil-Pollution-Casualties.aspx>> accessed 6 September, 2023

¹⁴³ Ibid

¹⁴⁴ IOPC FUNDS, FIPOL FIDAC “IOPC FUNDS | About Us” (September 11, 2001) <<https://iopcfunds.org/about-us/>> accessed 6 September, 2023

¹⁴⁵ Ibid

implement marine pollution prevention programs.¹⁴⁶

D. Regional Organizations: Regional organizations like EMSA and REMPEC enhance Convention implementation by providing regional expertise, training, and resources to support states in addressing oil pollution incidents.¹⁴⁷ In conclusion, international organizations play a varied role in assisting the Convention's implementation by providing technical experience, financial resources, capacity building, and coordination efforts. Their collaboration with nations, regional agencies, and other stakeholders is critical to effectively tackling the difficulties posed by high sea oil pollution.

4.2.4 Evaluation of the Convention's Impact on Preventing High Sea Oil Pollution

The impact of the 1969 International Convention on Intervention in Cases of Oil Pollution Casualties on mitigating high sea oil pollution is a complex and diverse subject. Evaluating its influence requires taking into account a number of aspects, including the Convention's strengths and shortcomings, as well as its role within the larger context of international maritime legislation and practices.

A. Positive Impacts

1) Establishment of a legal framework: One of the most notable effects of the Convention was the establishment of a legal framework for dealing with episodes of oil contamination on the high seas. Prior to the Convention, there were no clear guidelines and a legal vacuum, which the Convention filled.

2) International Cooperation: One of the most notable effects of the Convention was the establishment of a legal framework for dealing with episodes of oil contamination on the high seas. Prior to the Convention, there were no clear guidelines and a legal vacuum, which the Convention filled.

3) Liability and Compensation: The Convention established accountability and compensation standards, making polluters liable for oil contamination accidents. This has established a foundation for guaranteeing that affected parties, including states and people, can seek compensation for their losses.

4) Prevention Measure: The Convention encourages preventive actions to reduce the

¹⁴⁶ UN environment programme “Ocean, Seas and Coasts | WESR” <<https://wesr.unep.org/article/ocean-seas-and-coasts>> accessed 6 September, 2023

¹⁴⁷ Ottensoser M, “Oil Pollution on the High Seas: The Establishment of an International Regime to Deal with Public International Law and Private Law Issues and the Role of Non-State Actors in Their Resolution Prior to and at the 1969 International Legal Conference on Marine Pollution Damage (“Brussels Conference”)” (CUNY Academic Works) (2018) 67

likelihood of oil contamination accidents. It encourages states to adopt safety standards for vessels, navigational techniques, and hazardous cargo handling protocols, so contributing to increased preventative efforts.

B. Challenges and Limitations

1) Scope limitation: One of the Convention's major weaknesses is its narrow scope, as it exclusively addresses oil contamination. Modern maritime activities involve a greater range of dangerous substances, such as chemicals and liquefied natural gas, which the Convention does not handle adequately.

2) Enforcement Challenges: The Convention is dependent on governments' commitment to cooperate and effectively implement its provisions. The enforcement measures are inadequate, and not all governments will regularly follow through on their commitments. Inconsistent enforcement can impair the effectiveness of the Convention.

3) Changing Maritime Technology: Advances in maritime technology and vessel design may surpass the requirements of the Convention. Maintaining updated safety and pollution prevention regulations on vessels can be a constant struggle.

4) Climate Change and Arctic Concerns: The provisions of the Convention may be insufficient to handle the special issues created by oil spills in environmentally sensitive areas such as the Arctic. Because of melting ice, these locations are seeing increased shipping activity, raising worries about spill response capabilities.

The 1969 Intervention Convention has effectively addressed high sea oil pollution through legal frameworks, international cooperation, and liability principles, but its scope and enforcement challenges require ongoing discussions, potential amendments, and integration of multiple international agreements.

4.3 Conclusion

From this chapter we have learnt about the evolution and development of the 1969 Intervention Convention. For developing the convention, this research showed the background to lead the negotiation for drafting this convention and also showed debates for facing the modern challenges by this convention. After that, it remarked the role of this Intervention Convention about preventing high sea oil pollution. It's positive impact and challenges have focused for discussing to show the impact to what extent the Intervention Convention preventing the high sea pollution through oil spills.

Chapter 5

Recommendations and Conclusion

Up to Chapter 5, this study has shown how the 1969 Intervention Convention was formed, after which the need for this convention arose. Mentioned are the provisions of this convention where it has shown the way on how to prevent high sea pollution through oil spills. The strong role of the convention is also mentioned here, even its weaknesses are described at the same time. In this chapter, some recommendations will be made on how the Intervention Convention can play a more effective role in preventing this pollution. It will give an idea of how this convention can work more effectively by solving the limitations that have already been mentioned. And at the same time the summary of this entire research will be mentioned.

5.1 Findings of the Research

After completing the research of finding effectivity of the Intervention Convention, we got some positive and limited effectivity. Summary of those findings will be described here- 1969 Intervention convention emphasizes on International cooperation for mitigating the loss of environmental disaster in high sea by oil spills. At the same time, it introduces for the first time, the unilateral approach for taking action to rescue the high seas from oil pollution and also rescue the affected ship from the high sea. But this convention has limitations for scope and applicability. Canada and United State didn't want to join the Brussels conference as this convention is not cover the Arctic Ocean and also this convention is only applicable for the oil spills hazard. The world has needed to make another convention for other corrosive substances and that convention is the "1973 Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil". Very interestingly, this 1969 Intervention Convention covers all maritime vessels only, but it is incapable to cover the battleships and other state-owned ships used for non-commercial government operations. It is true that day by day the possibility of war has been increasing. So, without the scope of applicability in battleship, it remains so outdated. Therefore, this convention cannot be called a modern convention even if it wants to, because it is not fully successful in solving modern problems.

5.2 Recommendations

Several ideas can be considered to mitigate high sea oil pollution more effectively through the 1969 Intervention Convention. These recommendations seek to improve the provisions of the Convention while also addressing contemporary issues. They are given below-

a. Expand the Scope: Consider broadening the scope of the Convention to encompass a larger variety of dangerous chemicals other than oil. This would address the growing transport of chemicals and liquefied natural gas over the high seas, in accordance with modern maritime procedures.

b. Review and Update Liability and Compensation: Review and update the responsibility and compensation provisions on a regular basis to ensure that they reflect current economic realities and cover the costs of oil pollution occurrences effectively. Consider raising compensation caps to account for inflation and rising environmental restoration expenses.

c. Promote Environmental Impact Assessments: Encourage states to conduct comprehensive environmental impact studies for proposed high-risk marine operations such as oil exploration and drilling in environmentally vulnerable areas. Ascertain that these assessments are required for permits and approvals.

d. Climate-Resilient Response Strategies: Create climate-resilient oil spill response solutions to deal with the issues given by oil spills in changing climatic conditions, such as extreme weather events and shifting ocean currents.¹⁴⁸

e. Arctic-Specific Provisions: Recognize the special issues posed by oil spills in Arctic regions and create specific provisions and response methods for dealing with spills in ice-covered waterways. To ensure preparation, work with Arctic states.

f. Promote Research and Technology: Encourage improved technology and strategy research and development for oil spill detection, containment, and cleanup. Invest in innovations that will increase the efficacy of response efforts.

g. Facilitate Information Sharing: Encourage international collaboration in the exchange of real-time information regarding oil spills and response efforts. Create systems for the quick exchange of information among affected governments, relevant agencies, and organizations.¹⁴⁹

¹⁴⁸ Ottensoser M, "Oil Pollution on the High Seas: The Establishment of an International Regime to Deal with Public International Law and Private Law Issues and the Role of Non-State Actors in Their Resolution Prior to and at the 1969 International Legal Conference on Marine Pollution Damage ("Brussels Conference")" (CUNY Academic Works) (2018) 67

¹⁴⁹ Ibid

h. Integration with Regional Agreements: Encourage the Convention's integration with regional agreements and institutions focusing on oil pollution response, such as regional marine pollution emergency response centers.¹⁵⁰

i. Multilateral Collaboration: Encourage multilateral collaboration among nations, international organizations, and industry groups to thoroughly and effectively combat high sea oil pollution.¹⁵¹

j. Globalization and Trade volume: Since the Convention's implementation, the volume of global maritime trade has expanded significantly. This expansion has increased the possibility of oil spills and the need for a more robust and responsive legal framework.

These recommendations enhance Convention's effectiveness in mitigating high sea oil pollution, requiring ongoing cooperation among states and stakeholders to protect the maritime environment.

5.3 Conclusion

Globalization significantly impacts international law, leading to a more complex and multi-layered system. States are borrowing or transplanting legal structures, and progressive approaches are being taken to increase regulatory frameworks.¹⁵² This is particularly evident in environmental issues like high sea oil pollution, where cooperation is crucial to contain potential environmental damage.¹⁵³

In conclusion, this research shows that the “1969 Intervention Convention” has significantly contributed to addressing high sea oil pollution, providing a legal framework, fostering international cooperation, and introducing liability and compensation principles. However, with evolving maritime practices and technology, the Convention faces both challenges and opportunities. The Convention establishes a legal framework for oil pollution intervention, promotes international cooperation, encourages responsible vessel operation, and holds polluters accountable, promoting proactive marine environment protection. Nonetheless, the Convention has drawbacks, such as its limited scope, enforcement issues, and the need for

¹⁵⁰ Ottensoser M, “Oil Pollution on the High Seas: The Establishment of an International Regime to Deal with Public International Law and Private Law Issues and the Role of Non-State Actors in Their Resolution Prior to and at the 1969 International Legal Conference on Marine Pollution Damage (“Brussels Conference”)” (CUNY Academic Works) (2018) 67

¹⁵¹ Ibid

¹⁵² Saeideh Feizabadi, “eRepo - Transboundary Oil Pollution and International Law” (eRepo - Transboundary Oil Pollution and International Law, December 31, 2018) 76

¹⁵³ Ibid

periodic modifications to reflect current circumstances. The changing nature of maritime operations, the appearance of new contaminants, and the consequences of climate change highlight the significance of evaluating and improving the provisions of the Convention to ensure its sustained effectiveness.

High sea oil pollution risks are higher in areas like the Gulf of Guinea, North Sea, Greenland, Mediterranean Sea, and Arctic Sea.¹⁵⁴ Inadequate international law has led to cases like the 2009 Montera oil spill in the Timor Sea, highlighting the need for improved compensation and liability regimes. Consultations and discussions are ongoing to address these issues.¹⁵⁵ This thesis highlights the solution for these incidents and for mitigating the dangerous consequences of oil pollution in high seas. To maximize the impact of the Convention in reducing high sea oil pollution, stakeholders must commit to continued communication, cooperation, and adaptation. This includes broadening its scope to include a wider range of hazardous compounds, increasing enforcement mechanisms, encouraging environmental impact studies, and encouraging climate-resilient response options. The Convention may continue to be a critical tool in safeguarding the health and sustainability of our global seas by aggressively addressing these concerns and implementing forward-thinking suggestions. Through our united efforts, we can hope to protect the high seas from the destructive effects of oil contamination for future generations.

¹⁵⁴ Saeideh Feizabadi, “eRepo - Transboundary Oil Pollution and International Law” (eRepo - Transboundary Oil Pollution and International Law, December 31, 2018) 76

¹⁵⁵ Ibid

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