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MARINE OIL POLLUTION LEGISLATION IN THE GULF OF GUINEA

By

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To

The Lord God Almighty

to

My Father (may his soul rest in peace)

to

my mother

and

to

the entire Akanji's family

DECLARATION

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the university.

Signature……

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ABSTRACT

Title of Dissertation: **Marine Oil Pollution Legislation in the Gulf of Guinea**

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This dissertation is a study of marine oil pollution legislation in the Gulf of Guinea within the content of international law on oil pollution matters. The study defines and describes the region briefly. It gives a general historical overview of marine oil pollution incidents in the world. The study focuses on oil exploration, exploitation and production in the top five oil producing countries in the Gulf of Guinea. A brief look is taken of the existing international legal regimes on oil pollution matters under public international, regulatory and private laws and the participation of Gulf of Guinea countries in these regimes. Initiatives being taken at global, national and regional levels to address the problem are analyzed, with emphasis on those taken at the regional level. The requirements for establishing an efficient mechanism to combat Marine Oil Pollution in the study area are determined. A proposition is made of a regional organization that could manage major oil spills in the study area. A regional marine oil pollution Act is proposed. Recommendations are made for all states in the region to ratify international conventions dealing with oil pollution matters in the light of the need for a harmonized regional approach on this issue.

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LIST OF ABBREVIATIONS

BP	British Petroleum
CABGOC	Cabinda Gulf Oil Company
CRISTAL	Contract Regarding an Interim Supplement to Tanker Liability
CNL	Chevron Nigeria Limited
CG	Coast Guard
CLC	Civil Liability Convention
CEAO	West African Economic Community
CECAF	Fishery Committee for the Eastern Central Atlantic
DRC	Democratic Republic of Congo
DPR	Department of Petroleum Resources
ESPC	Exploration and Production Contract
EEZ	Exclusive Economic Zone
EPNL	Elf Petroleum Nigeria Limited
FEPA	Federal Environmental Protection Agency
ECOWAS	Economic Community of West African States
FEPA	Federal Environmental Protection Agency
FAO	Food and Agriculture Organization
GDP	Gross Domestic Product
GOG	Gulf of Guinea
GOGMEPO	Gulf of Guinea Marine Environmental Protection Organization
GOGMEPO-CG	Gulf of Guinea Marine Environmental Protection Organization Coast Guard
IMF	International Monetary Fund
ITOPF	International Tankers Owners Pollution Federation Limited
IMO	International Maritime Organization
IFC	International Finance Corporation
IMCO	Inter-Governmental Maritime Consultative Organization
IPU	Inter Parliamentary Union

LNG	Liquefied Natural Gas
MP	Marine Pollution
MOP	Marine Oil Pollution
MOPL	Marine Oil Pollution Legislation
MOU	Memorandum of Understanding
MEPC	Marine Environmental Protection Committee
MARPOL	International Convention for the Prevention of Pollution from Ship
MPNU	Mobil Producing Nigeria Unlimited
NAOC	Nigerian Agip Oil Company Limited
NIC	National Intelligence Council
NNPC	Nigerian National Petroleum Corporation
OPEC	Organization of Petroleum Exporting Countries
OILPOL	International Convention for the Prevention of Oil Pollution
OPRC	International Convention on Oil Pollution Preparedness, Response and Co-operation
OCAM	Afro-Malagasy Common Organization
OPA 90	Oil Pollution Act, 1990
OP	Oil Pollution
SPDC	Shell Petroleum Development Company of Nigeria Limited
SDR	Standard Drawing Rights
SONARA	National Refinery Company
SNPC	Société Nationale des Petroles du Congo
SACW	South Atlantic Central Water
TOVALOP	Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution
TOPCON	Texaco Overseas Petroleum Company of Nigeria Unlimited
USA DoE	United States of America Department of Energy
UDEAC	Economic Union of Central Africa
UNCLOS	United Nations Convention on the Law of the Sea
UNEP	United Nations Environment Programme
UK	United Kingdom

USA-CG	United States Coast Guard
VLCC	Very Large Crude Carriers
VTSS	Voluntary Traffic Separation Schemes
WMU	World Maritime University

CHAPTER 1

THE OVERALL PERSPECTIVE OF THE PROBLEM

1.0 INTRODUCTION

Chapter one deals with the background, the introduction of the problem as well as the approach used for investigation. In doing this, it begins by defining the region and listing the countries that are located in the study area. Then follows a brief description of the surface temperature, salinity and ocean current circulation in the area. The involvement of the oil industry in the Gulf of Guinea is briefly discussed. The chapter concludes with a look at the aim of the study and the methodology of investigation.

1.1 LOCATION OF THE STUDY AREA

The Gulf of Guinea (GOG) is located in the atlantic coast of West Africa. Considering that pollution has no strict boundary, for the purposes of this study, the GOG region lies between the northern border of Mauritania and the southern border of Namibia, including the islands of Cape Verde and São Tomé & Principé (UNEP 1979). The GOG coastline therefore passes through the following countries in West and Central Africa: Mauritania, Senegal, Gambia, Guinea-Bissau, Guinea, Sierra-Leone, Liberia, Ivory-coast, Ghana, Togo, Benin, Nigeria, Cameroon, Equatorial-Guinea, Gabon, Congo Brazzaville, Democratic Republic of Congo (DRC), Angola and Namibia; including the islands of São Tomé & Principé, and Cape Verde. The GOG also includes the following landlocked countries; Mali, Burkina Faso, Niger, Chad and Central African Republic. However, because of the difficulties in acquiring information and the short time allocated for this dissertation, the writer shall

concentrate on the Marine Oil Pollution Legislation (MOPL) of the top five oil producing countries in the region, namely - Nigeria, Angola, Gabon, Congo Brazzaville and Cameroon.

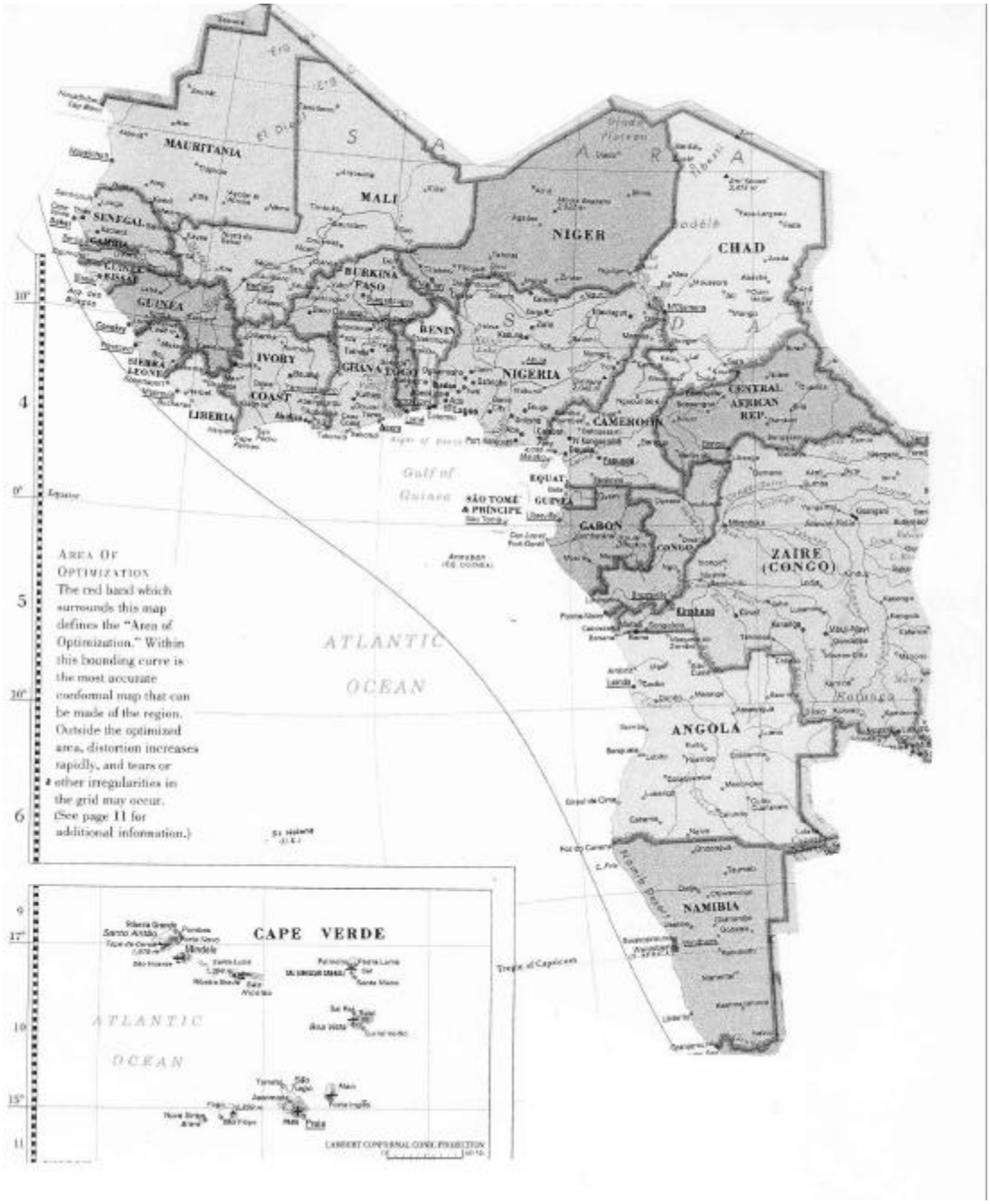


Figure 1.1: Map showing the Gulf of Guinea countries

Source: ***Oxford Hammond Atlas of the world***

1.2 SURFACE CURRENTS, TEMPERATURE AND SALINITY IN THE GOG

1.2.1 Overview of circulation in the GOG

The process of coastal upwelling is considered to be composed of a climatic steady state part and fluctuations acting on different spatial and temporary scales. Some charges occur in the system of trade winds and modify the equatorial regime of currents as well as the coastal upwelling regimes on both flanks of the inter tropical convergence zone. There is an opposite thermal response in near surface layers along the zonal coast in the GOG and along the meridian coast off north west Africa. Off the continental slope of Senegal and Mauritania, the poleward undercurrent is linked with the system of eastward flowing equatorial undercurrents via the transport of South Atlantic Central Water (SACW) around the eastern flank of the Guinea dome (Longhurst, 1979). The upwelling undercurrent partly feeds its SACW properties into the belt of coastal upwelling and contributes significantly to the biological productivity during normal and abnormal upwelling years. This circulation results in: 1. the area being a rich fishing ground; 2. high air temperature of up to and above 60 ^{o} C; 3. the present current direction being towards the coast.

Thus, in an event of an oil spill in the region, it shall have devastating effects on the region's rich biodiversity coastline, the high temperatures may melt the oil and the current may carry the oil to the beaches with damaging consequence on the natural habitat, wild life, fishery and tourism industries.

1.2.2 Surface temperature and salinity in the GOG waters

Surface temperatures are generally 1^{o}C warmer than the overlying air temperatures. Deviations from this pattern of distribution are caused by horizontal water transport in strong currents and by vertical transport in regions of upwelling. Surface salinity is low (less than 35 $^{o}/_{oo}$) in the doldrums where there is heavy precipitation. On the equatorial sides of the horse latitudes the salinity is greater than 37$^{o}/_{oo}$. In the northern westerlise it is about 35 $^{o}/_{oo}$ and in the southern westerlies it is about 34$^{o}/_{oo}$. Salinity values below 30$^{o}/_{oo}$ occur where currents such as the Eastern Greenland, West Greenland, and Labrador, transport melting ice (McGrav-Hill, 1980).

1.2.3 Ice condition

As the glaciers empty into the Disco Bay, the icebergs break off and are carried southward by the Labrador Current (which end up at the northern part of the GOG as Portugal current). Icebergs generally drift south of the Grand Banks and some are known to have drifted south-west of Bermuda. During the period of greatest frequency (between March and July) their paths are observed and reported by the international Ice Patrol. In the south Atlantic large, tabular icebergs separate from the Atlantic ice shelf and drift northward. One of the largest, seen in 1953, was 140 km long, 40 km wide and rose 30 m out of their sea (McGrav-Hill, 1980).

1.2.4 Surface Currents

Surface currents in the Atlantic Ocean flow in much the same direction as the prevailing surface winds. Deflections from these directions are caused by the bottom topography and the latitude and get increased effect of carioles forces. The fairly constant flow of the North and South Equatorial currents is sustained largely by the trade winds. As a result, warm water is piled up along the poleward borders of these currents and on the western sides of the Atlantic Ocean.

The currents in the south Atlantic are in many respects the counterparts of those of the north Atlantic, for example, the Brazilian Current and the Gulf Stream, the Benguela and Canaries currents and the Falkland and the Labrador currents. A circumpolar current, the West Wind Drift, is present and at about 50 ^{o} S there is a pronounced converging movement, the so-called Antarctic Convergence. The equatorial counter current, which flows in an easterly direction between the North and South Equatorial currents, is clearly defined as the Guinea Current along the Gold Coast of Africa (McGraw-Hill, 1980).

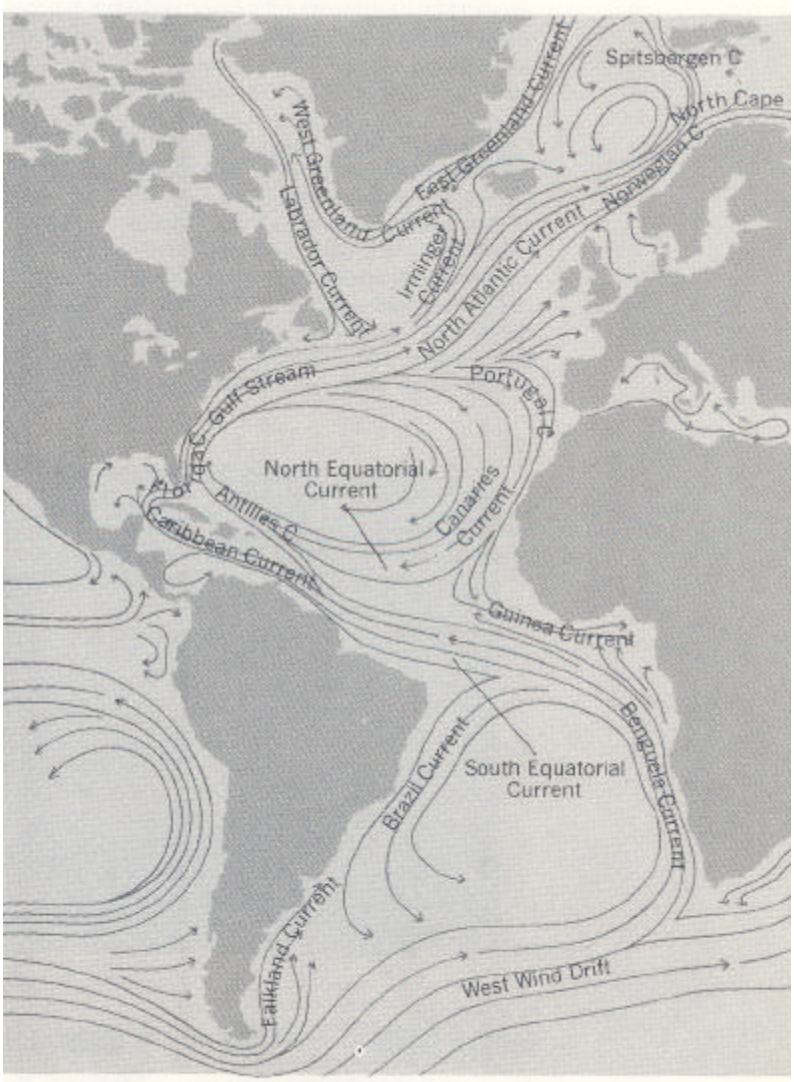


Fig. 3. Currents of the Atlantic Ocean. (*Adapted from J. Bartholomew, Advance Atlas of Modern Geography, McGraw-Hill, 3d ed., 1957*)

Figure 1.2: Map showing the currents circulation in the Gulf of Guinea.

1.3 PETROLEUM EXPLORATION, EXPLOITATION AND MARINE OIL POLLUTION IN THE GULF OF GUINEA

Total average oil output in GOG went from 127.5 million tons per day in 1980 to 174.6 million tons in 1996. These figures are about 41 and 49 %, respectively, compared to the oil output for the whole of Africa during the same period. The above

figures were about 4.0 %, compared to the world's total output in 1996 (Financial Times, 1998).

Until about a decade ago, there was not much interest in searching for oil in the deep waters off the GOG. In the recent past, however, the West African sub-region has become a classical example of the successful deployment of new technology to produce crude oil from deep water offshore. Technological advancement such as 3-diamentional (3D) mapping technique has also led to significant reduction in deep water prospecting costs, as well as an appreciable increase in the frequency of discoveries.

Within the last decade, about half of the sub-region's oil production has been offshore, with the activities concentrated in Nigeria and Angola. Given the great prospects of oil discoveries in ultra-deep water, most countries in the sub-region have very bright chances of finding oil. These prospects are enhanced by numerous studies within and outside Organization Of Petroleum Exporting Countries (OPEC), which show that, on balance, demand for oil is set to keep rising based mainly on the energy requirements of emerging countries. Additionally, other key oil producing areas such as the Gulf of Mexico and the North Sea, are almost at their peak. Consequently, ultra-deep sectors such as the GOG to which most West and Central African countries belong, hold incredible potential for major discoveries. So, while Nigeria and Angola are currently the key players in oil prospecting in offshore deep water, other countries in the sub-region have very good chances of benefiting from these natural bounties in the years ahead.

The hundreds of thousands of square kilometres of the sub-region’s largely under explored ultra-deep waters (that is, depths of 1,000 metres or more) would seem to make the GOG the crown jewel, as the most sought after new frontier in the offshore industry. The National Intelligence Council (NIC), a US government think-tank, said that West Africa's role in the global energy market will grow and it projects that in 2015 the region will provide North America with 25% of its oil imports. The

projection is to be compared to the current 16% import from sub-Saharan Africa and would surpass Persian Gulf imports.

During the year 2002 alone, US oil companies like Exxon-Mobil and Chevron-Texaco, and other operators such as Amerada Hess, Marathon and Ocean Energy invested more than US$10 billion in African oil (US Economic Magazine, 2002). The Chad-Cameroon pipeline will carry an estimated 250,000 barrels of oil per day from Chad to Kribi in the atlantic coast of Cameroon (Chad-Cameroon pipeline project, 2002).

Besides offshore oil production, there also exist a lot of shore-based production of oil in this area that has been going on for many years. Big oil tankers frequently transport oil from the region to the USA and Western Europe. The region also forms an important part of the route for tanker traffic transporting crude oil from countries in the Middle East to consumer countries in Western Europe and North America.

Even though there has been no major oil accident in this region in recent times similar to the 2002 Prestige disaster, increase in the rate of oil exploration and exploitation means that its oceans and coastal areas are potentially at high risk of such accidents. Unfortunately, there is no regional legislative framework regarding Marine Oil Pollution (MOP) in this important region of the oil industry. For instance, Cameroon is not a state party to MARPOL 73/78. The region was not included in the 'Special Areas' for which all discharges are prohibited by the 1954 Oil Pollution Convention and is still not included in the 'Special Areas' under annex I of MARPOL 73/78. Recent major oil accidents have prompted countries of the EU and the USA to strengthen their legislations on entry and circulation of single hull tankers in their waters. It is likely that such tankers will turn to areas with more relaxed or non-existing legislation on matters of MOP. The GOG is such an area. Most of the countries in the region neither have a proper maritime administration in place nor appropriate legislation to successfully implement international conventions on MOP. Because of lack of sub-regional cooperation, for those countries that have enacted some legislation, the safety standards contained therein vary from one country to the

other, making implementation difficult. The intention of this dissertation is not to draft legislation because this is beyond the scope of the work. The idea is to draw the attention of the countries in the region to the serious involvement of the oil industry in the area and the need to take action to safeguard against a major oil disaster in the region.

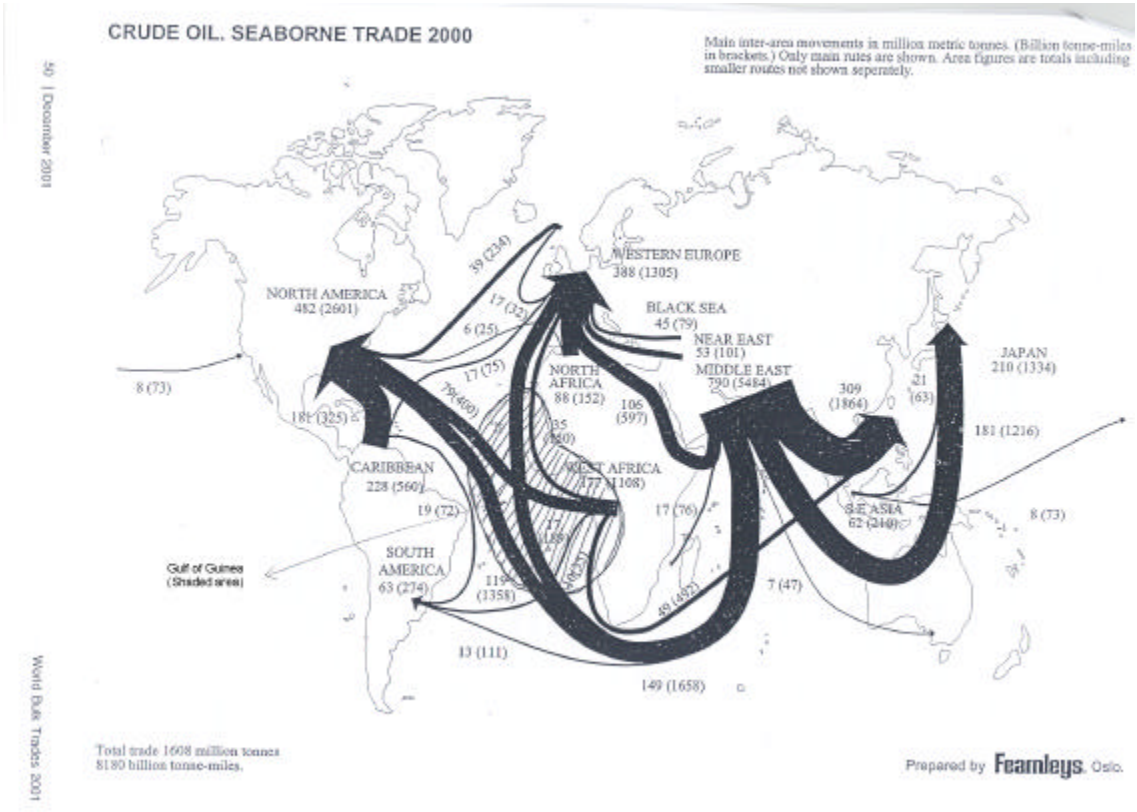


Figure 1.3: Map showing main crude oil transportation routes.

Source: Feamleys, Oslo: ***Crude oil main inter-area movements (routes), seaborne trade 2000***

1.4 AIM OF THE STUDY

Because the GOG region is an important player in the oil industry, this work highlights the fact that it is increasingly prone to MOP. The work examines existing legislation on Oil Pollution (OP) matters in countries of the region with emphasis on

Nigeria, Angola, Gabon, Congo Brazzaville and Cameroon (top five oil producers in the region).

It proposes the way forward after examining the reasons why some governments in the region have either not ratified international conventions dealing with MOP at all, or have ratified but not passed them through their national laws for implementation. Based on the existing situation and drawing from the international legal regime on MOP, the work recommends and proposes a regional legal framework for MOP in the GOG.

The implementation of such an approach poses a serious challenge to the countries of the region, especially with the limited human resources and notoriously ill-prioritized budgetary problems. The work proposes an organizational structure that can take care of such issues and examines the type of technical cooperation assistance needed to lay the necessary ground work required to put in place the proposed legislation on MOP matters.

The work therefore aims precisely to:

1. describe the present status of oil exploration, exploitation, production and Marine Oil Pollution Legislation (MOPL) in the GOG, specifically in Nigeria, Angola, Gabon, Congo Brazzaville and Cameroon;

2. examine the weaknesses of such legislation and make new proposals for a region legal framework that can manage MOP in the region based on international legal regime;

3. examine factors related to the enhancement of a precautionary approach to guide against MOP in the area. The proactive (take measures to guide against accidental oil spills) now seems necessary and urgent given the failure of the reactive (take action after spill has occurred) approach that the maritime industry has adopted so far;

4. stress the fact that, regional cooperation in combating MOP is the only feasible way forward even though it poses serious challenges to countries of the region.

1.5 METHODS USED

Information on the subject was perceived from reports of The Food and Agriculture Organization of the United Nations and United Nations Environment Programme (FAO/UNEP) joint project on the GOG marine environment (FAO/UNEP Joint Project FP/0503-77-02). Information was also perceived from relevant documents in the World Maritime University (WMU) library and from the Internet. The subject was also discussed extensively with some lecturers of the World Maritime University.

A three-week fieldwork was undertaken in Cameroon in December 2002, during which the Ministry of Transport and the Ministry of the Environment and Forestry both provided only limited information. Merchant shipping offices in Douala and Yaounde (Cameroon) were visited to collect information but nothing very helpful was found.

Most countries of the region have neither a maritime administration nor a MOPL per se in place. Consultation with some governments (Nigeria and Cameroon) to get information on their MOP law yielded little fruits. The African Section of the International Maritime Organisation (IMO) Technical Cooperation Division was contacted, and the current Head of Section, Mr. Juvenal J. M. SHIUNDU, said that IMO recently recruited a consultant to draft MOPL for Sierra Leone and later Ghana, which is still in progress.

CHAPTER 2

OIL EXPLORATION, EXPLOITATION, PRODUCTION AND MARINE OIL POLLUTION LEGISLATION IN THE GULF OF GUINEA

2.0 INTRODUCTION

This chapter begins with a general historical overview of MOP accidents that have occurred around the world and the reaction of the international community and the oil industry to such accidents. The various conventions that have resulted from these disasters and the organizations responsible for their coming into being are mentioned. This is then followed by a brief discussion on oil exploration, exploitation and production in the top five oil producing countries in the GOG (these countries are also the top five oil producing nations in sub-saharan Africa). The degree of involvement of the oil industry in these countries is discussed in a descending order. The countries are: Nigeria, Angola, Gabon, Congo Brazzaville and Cameroon. The chapter concludes with a look at the extent to which these countries have ratified international conventions on MOP.

2.1 HISTORICAL BACKGROUND

General concern over MOP appears to have started after World War I. At the time, the USA and later the League of Nations both undertook to obtain explicit international agreements on measures to combat MOP. From the beginning therefore, almost all prescriptive activity took the form of international agreements because prior to the end of the war, very few states sought to extend pollution legislations beyond their territorial seas and no state had applied prohibitive regulations beyond this stage (Gold, 1997). The first international convention relating to oil pollution was formulated at an international maritime conference that held in Washington in 1926. This conference discussed the issue of oil pollution in both technical and legal

forms but the convention failed because it was not ratified by any nation. The rising world economy of the 1950s, which resulted in an increasing demand for hydrocarbon fuels, contributed to renewed concern over the problem of MOP. In 1954, the International Convention for the Prevention of Oil Pollution was concluded at a conference in London. This convention, code-named 'OILPOL 54' entered into force in 1958 and prohibited discharge of oil and oily mixtures from certain vessels in specific ocean areas. Following the formation, in 1958, of the Inter-Governmental Maritime Consultative Organization (IMCO), a specialized agency of the United Nations, another conference on oil pollution was held in Copenhagen (Denmark) later the same year. Conferences of the first and second United Nations Laws of the Sea took place in Geneva in 1958 and 1960 respectively.

At these conferences, the issue of marine pollution was superficially considered by including in the High Sea Convention, the requirement for the state 'to draw up regulations to prevent pollution of the sea by discharge of oil from either ships, pipelines or from exploitation of the seabed and its subsoil, taking into account the existing treaty on the provision of the subject' (article 24).
The *Torrey Canyon* disaster of March 18th, 1967 hit the maritime world completely unprepared. Scientific research in oil disposal was then, at best, still experimental, yet over 59,500 barrels (>2.5 million gallons) of various chemical dispersants were then in use, often with more disastrous effects on the marine environment than the crude oil itself (Gold, 1997). Public concern aroused by the wide variety of problems caused by this accident resulted in a lot of debate at IMCO and within the shipping and oil industries.

The result of the debate was two new international conventions and one private international agreement. Firstly, IMCO (now called IMO) completed the International Convention of Civil Liability for Oil Pollution Damage in 1969 (CLC 69). CLC 69 abruptly changed the traditional liability base from one of proven fault or negligence to one of strict liability. Secondly, in the same year, IMCO completed the International Convention relating to Intervention on the High seas in cases of oil

pollution casualties. The seriousness of ship-source MOP was demonstrated by the fact that, after the *Torrey Canyon* incident, coastal states were given the right by IMCO to take action outside their own areas of maritime jurisdiction. This also shows how a single act of navigational fault can change maritime history.

As post *Torrey Canyon* disaster debate went on at IMCO, it became clear to the oil tanker industry that public pressure could lead coastal states to take unilateral action, unless an alternative interim compensation regime was quickly available considering that the conventions needed some years to enter into force. This resulted in the formation of the Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution (TOVALOP) in 1969. The main purpose of TOVALOP at its inception was to encourage tanker owners to, irrespective of the defaulter, pay for the cost of cleaning up spills before later recovering it from the insurance. The formation of TOVALOP by the oil industry itself illustrated the importance attached to environmental issues when it comes to MOP.

The advent of the super tanker and the Very Large Crude Carriers (VLCC) coincided with this period and led coastal states to raise their concern about increasing ship source marine pollution. Their argument was that even with the existence of the CLC Convention and TAVALOP, the upper limits of liability were insufficient for large spills. It was thus decided at IMCO in 1971, that a supplementary convention to CLC was needed. This led to the birth of the International Convention on the Establishment of an International Fund for Oil Pollution Damage (Fund 71). Considering that Fund 71 needed some years to enter into force, the oil industry again took a central role of responsibility by setting up an additional voluntary interim agreement. At this time, it was the turn of the international oil companies, which established a new scheme known as the Contract Regarding an Interim Supplement to Tanker Liability for oil pollution (CRISTAL) in 1971.

At this stage, increasing concern about marine oil pollution (MOP) assumed different dimensions at national, regional and international fora. For example, at the national

level some coastal states like the USA and Canada radically adjusted their marine pollution (MP) legislations. The agreement between Denmark, Finland, Norway and Sweden covering cooperation in measures to deal with pollution of the sea by oil was concluded in 1971. At the international level, focus shifted back to IMCO, which in late 1973 adopted the International Convention for the Prevention of Pollution from ships, (MARPOL). It is today called MARPOL 73/78 due to the protocol of 1978. MARPOL was a result of considerable dissatisfaction with OILPOL 54, which could no longer satisfy the demands of the more environmentally conscious world. Again in 1973, attention also shifted to the global level, with the commencement of the third United Nations conference on the law of the sea (UNCLOS).

2.2 OIL EXPLORATIONS, EXPLOITATION, PRODUCTION AND MARINE OIL POLLUTION LEGISLATION IN THE TOP FIVE OIL PRODUCING COUNTRIES OF THE GULF OF GUINEA

Work by Professor Gold (1997) shows that most countries of the GOG involved in the oil industry have no information available on their national laws on combating MOP per se. The following countries have no information on MOPL: Benin, Cameroon, Cape Verde, Ivory Coast, Nigeria, Gabon, Guinea, Mauritania, Senegal, Togo and the Democratic Republic of Congo (DRC). Those that have some legislation on combating marine pollution are: Congo, Gambia, Ghana, Liberia, and Sierra Leone. Therefore, of the countries in the GOG, 80% are involved in the oil business. About 70% of these have no legislation at all on MOP while 30% have some legislation on MOP (see appendix I)

2.2.1 NIGERIA

Nigeria (~110 million people) is the 6th largest oil producer in the world and the 1st largest in sub-Saharan Africa. Oil makes up 95% of Nigeria's foreign exchange earnings (U.S. EIA, 2000). The Political Economy of Oil (1994) reveals that, the first discovery of commercial quantities of oil in Nigeria was in 1956 at Oloibiri, about 90 km west of Port Harcourt. Exportation began in 1958, and increased in 1965 with the

completion of a terminal on Bonny Island. Production dropped between 1967 and 1970 but rose again in 1970, and by 1974 oil revenues constituted >80% of total federal revenues and >90% of export earnings. In 1980, oil accounted for 27% of GDP, about 80% of government revenues and expenditures, and 96% of total export receipts. Today, the petroleum sector comprises more than 40% of GDP, continuing to provide more than 95% of exports (IMF, 1998).

Estimates of Nigeria's oil reserves range from 16 billion to 22 billion barrels (US EIA, 1997). Environmental Resources Managers (1997) reveal that most of this oil is found in small fields in the coastal areas of the Niger Delta. Average operational costs in Nigeria's crude are around US$2.50 a barrel, higher than the Persian Gulf (Financial Times, 1998). Nigerian crude oil production averaged 2.21 million barrels per day (mbpd) for most of 1997, higher than the country's 1.865 mbpd quota set by the Organization of Petroleum Exporting Countries (OPEC). Nigeria's quota rose to 2.042 mbpd in 1998 (US EIA, 1998). It is estimated that oil production in Nigeria may reach 4 mbpd by the year 2010 (FBIS, 1998). Oil is exported to the U.S. and Western Europe, and nigeria is the 5th largest supplier of crude to the U.S., sending approximately 30% of its output (US EIA, 1998). According to the Nigerian constitution, all minerals, oil, and gas belong to the federal government (article 40(3) of the 1979 constitution, article 42(3) of the 1989 constitution, and article 47(3) of the draft 1995 constitution).

The first oil-related legislation in the then colonial state of Nigeria was passed in 1914 (PNE, 1970). In 1937, the Shell D'Arcy Company, jointly owned by Shell and by British Petroleum (BP), was given exclusive exploration and production rights in the whole of Nigeria. This monopoly was maintained until 1955, when the concession area was reduced and Mobil entered the field for the first time. Nigeria gained independence from Britain in 1960, and by 1962, Shell's concession areas were reduced to the most promising areas. By the mid-1960s, Gulf Oil (now Chevron), Elf, and Agip were all involved in production. In 1959, the Petroleum

Profits Tax Ordinance introduced a 50:50 profit share between the oil companies and the government.

In 1967, the government imposed OPEC terms on the companies, ensuring that greater royalties were paid. The 1968 Companies Decree forced all companies operating in Nigeria to become Nigerian corporations. The 1969 Petroleum Decree increased state control of the industry, and remains the basis for the regulatory system in operation today. The 1970s saw partial nationalization of the industry, as the Nigerian government took an equity stake in the oil industry, raising its participation in most companies from 35% in 1971, to 55% in 1974, and 60% in 1979.

The main onshore exploration and production activities undertaken today by foreign oil companies in Nigeria are in joint ventures with the Nigerian National Petroleum Corporation (NNPC), the state oil company:

- Shell Petroleum Development Company of Nigeria Limited (SPDC). NNPC (55%), Shell (30%), Elf (10%) and Agip (5%) and operates largely onshore on dry land or in the mangrove swamp. It accounts for more than 40% of Nigeria's total oil production (899,000 bpd in 1997).
- Chevron Nigeria Limited (CNL). Comprises NNPC (60%) and Chevron (40%) and produces about 400,000 bpd from oil fields west of the Niger river and offshore in shallow water.
- Mobil Producing Nigeria Unlimited (MPNU). Comprises NNPC (60%) and Mobil (40%) operates in the south-eastern delta with an average production of 632,000 bpd in 1997. Oil industry sources indicate that if current trends continue, Mobil is likely to overtake Shell as the largest producer in Nigeria within the next 5 years.
- Nigerian Agip Oil Company Limited (NAOC). Operated by Agip. NNPC (60%), Agip (20%) and Phillips Petroleum (20%). Produces 150,000 bpd mostly from small onshore fields.

- Elf Petroleum Nigeria Limited (EPNL). NNPC (60%) and Elf (40%). Produced ~125,000 bpd in 1997, both on and offshore. Texaco Overseas Petroleum Company of Nigeria Unlimited (TOPCON). Operated by Texaco and owned by NNPC (60%), Texaco (20%) and Chevron (20%). Currently produces ~60,000 bpd from five offshore fields.

Other foreign oil companies involved in Nigeria include BP, Statoil, Total, Pan Ocean, British Gas, Tenneco, Deminex, and Sun Oil.

In addition to its oil wealth, Nigeria has an estimated 104.7 trillion cubic feet (tcf) of proven natural gas reserves, the 10th largest in the world (US EIA, 1998). Energy Compass (1998) reveals plans to build a West African gas pipeline to transport gas from Nigerian to Ghana, Togo, and Benin.

Oil spill contingency arrangements in Nigeria are relatively under-developed. ITOPE sources (Nov. 2002) show that the responsibility for oil pollution control in Nigerian ports and coastal waters out to 30 NM lies with the Federal Environmental Protection Agency (FEPA) that is a division of the President's office. The Petroleum Inspectorate of NNPC and the country's resident oil industry also have delegated powers on matters of oil pollution. In collaboration with NNPC, the Nigerian National Oil Pollution Contingency Committee under the Ministry of Housing and Environment is currently drafting a national response plan for major oil spills. Even though the process of drafting the plan has been on for some years now, the current status of the draft is not known (ITOPF, Nov. 2002). Presently, the Department of Petroleum Resources (DPR) and FEPA are jointly drafting national environment guidelines and standards for the petroleum industry. The Nigerian national legislation requires that each oil industry operator possesses a minimum stockpile of oil spill resources like booms, skimmers, boats etc, in order to respond to spills from their own facilities.

Unlike Cameroon, Nigeria has ratified MARPOL, OPRC 90, CLC 92 and FUND 92 (IMO Status of Conventions, 2003). However, no information is available on

whether the ratified conventions are incorporated into the national law for implementation (Gold, 1997).

2.2.2 ANGOLA

Although not a member of Organization Of Petroleum Exporting Countries (OPEC), Angola is a significant oil producer. Major offshore oil discoveries have made the country a leading area for exploration in sub-Saharan Africa. This has added to national stability following a twenty year civil war and ongoing conflict, which has replaced the fractious peace accord between rebel leader Jonas Savimbi and the Angolan government. Angola is nevertheless a key producer and exporter in Africa's oil industry.

Recently, Angola with its giant finds in offshore deepwater, is Africa's second biggest oil producer. The petroleum industry is almost fifty years old. Initial exploration and success was onshore in Kwanza area. The industry expanded in the 1960's when oil was discovered offshore Cabinda. In 1973, oil became Angola's principal export. The production in the country has increased from about 110,000 bpd in 1970 to an average 735,000 bpd in 2002. Angola produces crude oils with a gravity ranging from 32 degrees to 39.5 degrees and a sulphur content of 1.12% to 0.14% (Angola Denies Elf Charges, 2000). Of course, there are other promising oil producers, including Cameroon, Congo and Gabon. In 1980, Gabon was producing about 180,000 bpd while Cameroon was pumping around 60,000 bpd. By 1997, Gabon and Cameroon were producing approximately 350,000 bpd and 110,000 bpd respectively.

In Angola, according to the guidelines in Decree 13/78 all hydrocarbon deposits are vested in the State and mining rights are granted to the State-owned company Sonangol. The national oil company, Sonangol, was established in 1976, and the 1978 petroleum law made Sonangol sole concessionaire for Exploration and Production. Sonangol is authorised to enter into partnerships with foreign companies for exploration and production of hydrocarbons. The partnerships may take the form

of a commercial company, a joint venture or a production-sharing contract. The Ministry of Petroleum regulates the oil industry in Angola. Sonangol also owns the country's oil refinery at Luanda.

After Nigeria, Angola is the most significant oil producer in sub-saharan Africa. The petroleum industry is the country's main economic asset. Between 1995-1999, oil revenues comprised approximately 70 to 89 % of government revenues and approximately 85 to 92 % of exports, and 42% of the country's GDP according to the IMF (2000). Oil production was expected to reach one million bpd by the year 2000. Sources from Government of Angola, Memorandum of Economic and Financial Policies (2001) indicate that, in 2000, oil accounted for U.S. $3.26 billion of government revenue. On February 23, 2001, the Angolan government announced that oil revenues would account for 90.5 % of the current year's budget, or approximately U.S. $3.18 billion. The country's known recoverable reserves were estimated to total 5.4 billion barrels and its gas reserves at 700 billion cu metres as of January 1, 1998. Production increased to over 740,000 bpd in 2001 and it is estimated that production will reach 1 billion bpd by the end 2003.

Crude oil production averaged 735,000 bpd in 1998, most of which comes from offshore sources little touched by the years of civil war. 70% of the country's production is offshore, in the enclave of Cabinda. There has been massive investment from international oil companies. The Chevron subsidiary, Cabinda Gulf Oil Company (CABGOC), is the operator of the fields and has a 39.2% share in the joint venture. Other partners include Sonangol (41%), Elf Aquitaine (10%) and ENI-Agip (9.8%). CABGOC plans to invest nearly US $4 billion in field development activities over the next five years (U.S. EIA, 1998). The main oil producing areas in Angola are Block Zero (70% of Angolan crude) situated off the Cabinda enclave, Block 3 off the northern coast, and Blocks 1 and 2 off Soyo. There have been significant discoveries of major oilfields in Blocks 14 (Kuito), 17 (Girassol, Rosa, Dalia, Lirio) and 15 (Kissanje, Marimba, Hungo). These off shore discoveries have stimulated interest in Angola's deepwater concessions (Hart's Africa Oil and Gas, 2000). In block 3, Elf is the operator with a 50% interest. Other partners on the block include

Ajoco, Agip, Mitsubishi, Sonangol, INA-Naftaplin, and Naftgas. In addition, over thirty oil companies have interests in the various oil fields.

Angola's downstream industry, however, is struggling to recover from the disastrous civil war, unlike its promising upstream industry where foreign oil companies continue substantial investments. Sonangol has plans to build a new refinery to be based in Lobito or Namibe. The Belgian oil company, Petrofina, plays an active role both in the upstream area as a major producer, as well as in the downstream area in partnership with Sonangol.

Angola's economy and infrastructure have, however, been ravaged by civil war since 1974 which, after a brief period of political stability after 1994, was resumed in 1998. The most affected areas are in the north and northeast and the central highlands. To date the upstream oil industry has remained relatively untouched by the war that now appears to have ended.

Angola has estimated reserves of 1.6 Tcf of natural gas. Approximately 85% of the gas is flared although some is re-injected to enhance recovery. The government is implementing strategies to reduce flaring and to increase the commercial use of natural gas including its conversion to LPG for domestic consumption. There are plans for a liquefied natural gas (LNG) project.

According to the IMO status of convention (Feb. 2003), Angola has ratified the following international conventions on MOP; MARPOL 73/78, Intervention convention 1969, CLC protocol 1992, Fund protocol 1992, and OPRC 1990. It however, did not ratify CLC 1969 and has not yet ratified Bunkers convention 2001.

2.2.3 GABON

Gabon is a moderately wealthy country with diverse natural resources. It is also sub-Saharan Africa's third largest oil producer and as such the upstream oil industry plays a critical role in the economy representing approximately 80% of the country's export revenues. In the year 2000, the proven reserves are listed as 2.5 billion barrels; almost double the 1996 figure of 1.3 billion barrels. Production rates in 1999 averaged at 341,000 barrels per day (Hart's Africa Oil and Gas, 2000). Exploration and production occur both onshore and offshore.

The Gabonese downstream industry is modest incorporating the Sogara refinery at Port Gentil that has a nameplate capacity of 21,000 bpd and a retail network of about 100 sites. Gabon's main export partners are the United States, Western Europe and to a lesser extent the Far East. The state oil company is Société Nationale Petrolière Gabonaise.

Ownership of oil and gas and all mineral rights is vested in the State. It is the only titleholder of mining rights. The Mining Code was established by Law No 15/62 (1962), Decree No 981/PR (1970) and modified under Ordinance 45/73 (1973). The new taxation system is governed by Law No 14/74. Companies provide services on behalf of the State and finance hydrocarbon exploration and exploitation activities. Exploration and production companies are licensed under the Exploration and Production Contract (ESPC) established by Law No 14/82 in January 1983 that replaced the Concession Agreement. Gabon was a member of OPEC until 1996, when it left citing the high annual dues required by the organisation as its reason.

Petroleum exploration began in 1926 with the discovery of oil shows and seeps. The first commercial discovery was made by Elf onshore and production from the Ozouri Field started in 1956. Over the following 12 years oil production centered on the Elf onshore fields near Port Gentil. Between 1968 and 1990, major contributions were streamed from the giant Gamba onshore field operated by Shell, and from the offshore fields operated by Elf. These include the giant Anguille, Torpille and

Grondin fields. In 1990 the Shell operated onshore Rabi field and satellite fields began production.

Government sources acknowledge there are about 20 companies that hold upstream interests in Gabon. The focus of exploration is both onshore and offshore with the latest licensing round in 1998 offering deep-water concessions offshore. Operators include Energy Africa Gabon, Perenco Gabon, Fusion Oil and Gas, Marathon, Elf Gabon, Shell, Ocelot Gabon, Amerada Hess Gabon and Agip Gabon. Low oil prices in 1998 and early 1999 adversely affected the industry in Gabon.

IMF (1999) reveals that, Gabon's largest oil field is the Shell operated Rabi-Kounga oilfield, with estimated reserves of 440 million barrels and production of 150,000 bpd which accounts for 40% of national output. The second largest field is the Gamba-Ivinga field, also operated by Shell with production rates of 10,000 to 15,000 bpd. In the 1998/99 fiscal year, the Limande field (Energy Africa Gabon SA, operator Agip) averaged 4,400 bpd while the Moukouti field (Energy Africa, operator Perenco) produced 3,200 bpd. The Obangue oilfield (Ocelot Gabon) produced 1,500 bpd. The Tchatamba South and Tchatamba Marin fields (Marathon (operator), Energy Africa and Santa Fe) produced a combined 35,000 bpd which was processed at the Tchatamba Mobile Offshore Production Unit. The development of the Tchatamba West was scheduled to begin commerical production in late 2000. This well, together with the addiotnal well in Tchatamba South will raise production in excess of 40 000 bpd.

Elf Gabon reduced its exploration activity and investment in Gabon, mainly as a result of its increased interest in Angola. It greatly increased its net income from Gabon in the 1999 fiscal year as a result of increased prices for Gabon crude. Shell invested approximately $20 million in Gabon's offshore and onshore exploration and development.

Gabonese government sources indicate that, despite the proven oil reserves for Gabon having almost doubled since 1996 from 1.3 billion barrels to 2.5 billion

barrels, production rates are steadily decreasing. The government has plans to boost reserves and production, which include revising the production sharing contracts and increasing the number of permits issued. There has been increased investment by foreign companies.

Energy Africa Gabon signed a major oil exploration and production Partnership Agreement with the Government of Gabon. Under the terms of this agreement Energy Africa has the right to participate in six potential development projects and 22 exploration projects. This represents an interest in more than 80%, by area, of the onshore and offshore sedimentary basins of Gabon.

In 1999/2000, Energy Africa Gabon SA held an interest in the following areas. With Perenco as operator, these include Ablette (20%), Echira (40%), Ganga (40%). With Marathon Oil, there are Kowe (Tchatamba Marin, 25% and Tchatamba South, 25%). With Amerada Hess Gabon there is Azobe area (35%) acquired as part of a farmout agreement, with Agip Gabon the Limande field in the Limande area (20%). Energy Africa Gabon holds 60% interest in the Ofoubou-Ankani area in which it is also the operator. The Kari block was acquired under a production sharing contract in 1998. At the Ganga and Niungo discovery wells, extended production tests have been planned for late 2000 and the second quarter of 2001. Field development will be based on these tests. In 2001, a further two exploration wells were drilled on the Kari, as well as one on the Ofoubou Ankani area. Energy Africa Gabon now produces in the region of 11 000 bpd from its interests in five fields.

In December 1998, the Vanco Gabon Group, a consortium consisting of Total, Unocal, Vanco Energy, KerrMcGee and Reading and Bates Development, signed for two deep water exploration blocks: the Astrid Marin and the Anton Marin. In June 1999, Santa Fe Resources also signed an exploration and production agreement for deep offshore blocks (Human Rights Watch, 2001).

In November 1999, a consortium of five Australian companies (Fusion Oil and Gas-operator, Sunburnt Downs Pastoral Company, Hardman Resources, Horizon Energy

and Resources and Millenium Oil Corporation) signed Production Sharing Agreements (PSAs) for the Themis Marin (Kouango) and Iris Marin blocks.

In July 1998, Sasol Petroleum International and Vaalco Energy announced a crude oil discovery at the Etame-1 offshore well with a 3,500 bpd test flow rate. Western Atlas, Alcorn Petroleum and Minerals Corporation and Petrofields are the other partners. The development of the Salsich Permit continues following the acquisition of Nescor Energy's Gabonese subsidiary by King Resources. Development of the first field began in mid 2001.

According to the IMO status of Convention (Feb. 2003), Gabon has ratified the following international Conventions on MOP; MARPOL 73/78, Intervention convention 1969, CLC Convention 1969, CLC Protocol 1992, Fund Convention 1971 and Fund Protocol 1992. It has however not ratified OPRC 1990 and Bunkers Convention 2001.

2.2.4 CONGO BRAZZAVILLE

The Congo is the fourth largest oil producer in sub-Saharan Africa. The upstream oil industry is the mainstay of the Congolese economy supplying two-thirds of government revenue. Oil accounts for a large portion of Congo's GDP and the majority of the country’s exports. Current proven reserves are estimated to be 1,291 million tonnes of crude and large reserves of associated natural gas exist.

The downstream oil industry is also an important element in the country's economy. The oil industry is predominantly run by foreign companies and is centred on the coastal city of Pointe Noire where the Congolaise de Raffinage (Coraf) operates the 21,000 bpd Pointe Noire refinery. The refinery has been out of commission for four years and has only recently started operating again.

The labour situation in the Congo is sensitive and investors should consider this. Obligations on employers are considered onerous and political restructuring is

largely dictated by organised labour. Despite the potential barriers to investment in the Congolese oil industry, however, the sector is experiencing a period of growth.

Congo's total oil production increased significantly due to the start up of the N'Kossa field in 1996 and Kitina in 1997. Production increased when the Moho and Bilondo fields came on stream in 2001. Wells operated by Elf account for roughly 73.4% and those operated by Agip 26.6% of production. Congo is one of the West African countries where Energy Africa is active. The main crude export blend is Djeno with 27.6 API and 0.23% sulphur content (IMF, 2002).

Hydro-Congo, is the state owned public company which was responsible for upstream exploration activities. As part of a privatisation drive and rationalisation programme, Hydro-Congo has relinquished oil exploration and production assets and will restrict its activities to distribution and marketing. State-owned Société Nationale des Petroles du Congo (SNPC) is now responsible for exploration and production activities.

Government sources indicate that, Elf Congo holds interest ranging from 35% to 65% in onshore and offshore exploration and production licenses in association with various international oil companies. Elf has a terminal at Djeno, south of Pointe Noire and some production on offshore platforms. The company's largest offshore production facility, the Nkossa oil field, is located in the Gulf of Guinea, 60 km off the Congolese coast.

Exploration takes place on a large scale and several new discoveries have been made, especially in the deeper waters offshore, where both Tertiary and Cretaceous reservoirs are being targeted. The strong influence of the French government has assisted Elf Congo to have a pre-eminent position, alongside Agip and Amoco, in exploration, production and refining.

In August 1998, Energy Africa entered into an agreement with International Finance Corporation ("IFC"). Through this agreement it acquired the IFC's 43.75% holding in their joint venture company, Energy Africa Haute Mer Holdings Limited. This

increased Energy Africa's net interest in the N'Kossa field and Haute Mer exploration permit from 2.25% to 4%. The IFC and a group of banks remain as lenders to the Nkossa project (Energy Africa, 1999).

The downstream oil industry is an important element in the country's economy. The Coraf refinery, situated at Pointe Noire, has a nominal operating capacity of 21,000 barrels per day (1 million tons of crude per annum) but generally operates at a rate of 56% or lower. Ownership of the refinery is split between Hydro-Congo (60%) and Elf (40%). For four years the refinery was largely out of commission and only resumed operating at full strength in March 2000.

Consumption in 1997 and 1998 of refined petroleum products was of the order of 385,000 tons per year (8,000 bpd). Net oil exports were approximately 12,2 million tons in 1997 (245,000 bpd) and 12.8 million tons in 1998 (257,000 bpd). The Congo's main crude export markets are the United States and Italy (U.S. EIA, 1999). Distribution and marketing are currently carried out by Hydro-Congo, which is however earmarked for privatisation. Foreign companies dominate the downstream oil industry and many have a presence in the Congo. TotalFinaElf and Agip are the most active.

Despite the serious involvement of Congo in the oil industry, it has only ratified CLC Protocol 1992 and Fund Protocol 1992. It has not yet ratified other International Conventions on MOP such as MARPOL 73/78, Intervention Convention 1969, OPRC 1990 and Bunkers Convention 2001 (IMO status of Convention, 2003).

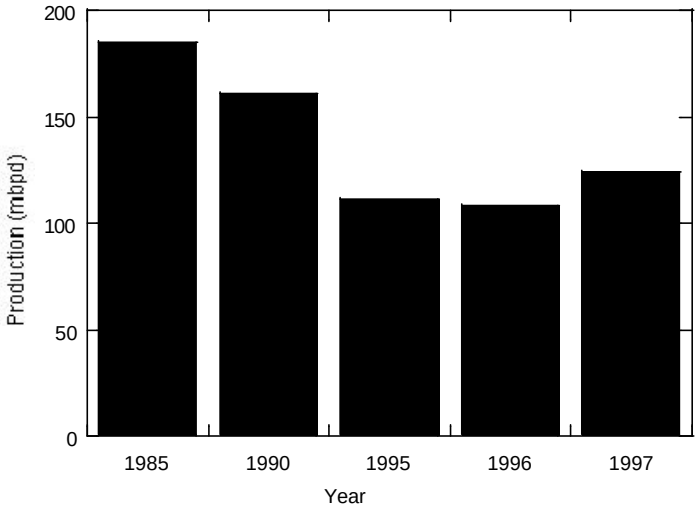
2.2.5 CAMEROON

The Republic of Cameroon is found in West Central Africa. It has a surface area of 475,000km^2 with a population of 15 million people. The population distribution is 32 people/km^2 and has a growth rate of 3%. The Gross Domestic Product (GDP) is slightly above the average in Sub Saharan Africa at USD 620 per capita (ESMAP, 2001). Cameroon is the 5^{th} oil-producing country in Africa with about ~100,000

barrels per day (bpd), which constitutes ~3% of the region's oil production. Oil reserves at the beginning of 1999 were estimated at 400 million barrels (mb), i.e. just above 1% of the region's reserves. The country also has gas reserves estimated at 3.9 trillion cubic feet (tcf), which are still largely unexploited (ESMAP, 2001).

Petroleum exploration in Cameroon began in the late 1940s. Exploratory drilling started in 1954 near Douala, where a number of surface oil seeps were found. Drilling resulted in the discovery of natural gas in 1955 in an onshore gas field close to Douala. Activity then shifted offshore between Cameroon and Nigeria in the Rio del Rey basin in the Niger delta, where significant oil and gas quantities have been discovered since the early 1970s. Since late 1970s, petroleum, essentially crude oil, has been the major driving force of the national economy. The first significant oil discovery was made in 1972 with the d'Ekoundou field developed by Elf. Intensive activity then led to more discoveries of larger fields by ELF (Kole in 1974, Kombo and Bravo Marine in 1976); Shell-Pecten (Lokele in 1977) and Total (Moudi in 1979). Oil production peaked in 1986 with approximately 9.5 million tons (Table 2.1). Recent developments include agreements with Trophy Petroleum, Perenco and CMS-Nomeco. Elf (now part of the TotalFina Group) has been and is still the largest producer, with ~75% of the country's yearly production. It is followed by Shell-Pecten with (~22%) and Perenco, (3%) (ESMAP, 2001).

Table 2.1 – Evolution of Crude Oil Production in Cameroon



Year	Crude oil Production (mbpd)
1985	185
1990	161
1995	111
1996	108
1997	124

Source: USA DoE

As shown on the bar chart, oil production was at the peak in 1985. After that it declined slowly but is now on the increase again and is expected to increase with the discovery of new oil wells as mentioned below.

A National Refinery Company (SONARA) is located in the port city of Limbe, 70 km north of Douala. With a capacity of 45,000 bpd (2.2 mmty), SONARA is owned (66 %) by the Government and oil companies (34%) like Elf, Mobil, Shell, Texaco and Total. In addition to supplying the domestic market (around 0.8 mmty), the refinery utilizes spare capacity to refine products for export.

The mining law No 64-LF/3 of 1964 and the fiscal law no 78/14 of 1978 governs petroleum exploration, development and production activities in Cameroon. Cameroon's petroleum contract has been subject to a number of improvements in 1990, 1991, 1995, and 1998 to make it more attractive to investors. All hydrocarbon rights are vested in the State and the State reserves the right to acquire an interest in all or part of the petroleum operations.

Cameroon oil is carried from the main Douala seaport to the markets in Western Europe and the USA. Recently, Kribi, a port city in Cameroon became the terminus

of the Chad-Cameroon pipeline, the biggest World Bank-sponsored project south of the Sahara yet. A consortium composed of Exxon, Shell and Elf plans to develop three oil fields in the Doba Basin in southern Chad. Approximately 300 wells would be drilled and production is estimated at about 225,000 bpd. Exporting the oil will require the building of a 1,100 km (600 mile) long pipeline through neighboring Cameroon, as well as related infrastructure such as pump and storage stations, about 500 km of road upgrades and the building of a floating storage and off-loading facility on Cameroon's Atlantic coast at Kribi (Exxon's Chad Doba Project, 1996).

Also, Cameroon Government information sources indicate that work will soon start on the re-development of the Limbe deep seaport. Once completed, oil tankers will also transport oil from Limbe to Europe and the USA. Increased loading at, and transport of oil from the three main seaports (Douala, Kribi and Limbe) means that these ports and their surrounding waters are potentially at risk of oil pollution.

Despite this, Cameroon currently does not have a functional national contingency plan to manage oil spills. International Tanker Owners Pollution Federation Limited (ITOPF) reveals that, the Cameroon national oil spill management contingency plan is still being drafted under an IMO contract. According to the same sources, the responsibility for oil spill response at national level falls within the prerogatives of the Ministry of Environment and Forestry. However, in practice, this is split between the departments of Merchant shipping (Ministry of transport) for coastal waters and the Cameroon National Ports Authority (Ministry of Finance) for port areas. Oil companies are expected to be responsible for spills at their installations. There is also a standing committee supposed to be responsible for combating MOP. Members of the committee come from different ministries like Defense, Public Works, Transport, Mines, Water & Energy and Fisheries & Animal Husbandry.

Cameroon has ratified the following International Conventions on MOP; Intervention Convention 1969, CLC Protocol 1976, CLC Protocol 1992, Fund Convention 1971,

Fund Protocol 1992. However, Cameroon has not yet ratified MARPOL 73/78, OPRC 1990 and Bunkers Convention 2001 (IMO Status of Conventions, 2003).

Fortunately, there has yet been no major oil accident in Cameroon. Coordination and management of an oil accident (identification of source of spill, nature and type of spill, rapid clean-up and containment of its spread, pursuance for payment of compensation etc) will be very difficult because of the existence of many organs supposed to be responsible for oil spill response but that have ill-defined specific tasks. The situation is further complicated by the lack of basic clean-up equipment like booms, skimmers, helicopters and boats, to name a few. Also, because Cameroon is not a member of most of the important international conventions on MOP (e.g. MARPOL 73/78, Bunkers convention and OPRC 1990), it does not have the legal grounds on which to pursue for clean up and payment of compensation by tanker companies that may be potential polluters under these Conventions.

This writer has so far dealt with oil exploitation and MOPL in the top five oil producing nations in sub-Saharan Africa. Discrepancies in the extent to which these nations have ratified and implemented international conventions on MOP means that it can be very difficult to tackle a major oil disaster in the region if it occurs. Since pollution knows no boundary, the occurrence of any such disaster will be the concern, not only of those countries that have ratified the conventions, but that of the region as a whole. There is, therefore, an urgent need for a regional precautionary approach that involves all the nations in the region to safeguard against such an incidence. The author has, in chapter five of this dissertation, proposed an organizational structure that could deal with such incidents.

CHAPTER 3

IMPLICATIONS OF PUBLIC INTERNATIONAL, REGULATORY AND PRIVATE LAWS ON MARINE OIL POLLUTION IN THE GULF OF GUINEA

3.0 INTRODUCTION

International law has been concerned with ship source Marine Oil Pollution (MOP) since 1954, when the International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL 54) was adopted in London. This convention, which was amended on several occasions, was aimed principally at preventing pollution from normal shipping operations. MARPOL 73/78 has replaced it. On the other hand, the frequency of accidental oil pollution has led to the drawing up of' a series of conventions intended to cope with pollution from accidents. Both cases are examined in this chapter, under international public law and regulatory law. The last part of the chapter deals with related agreements on liability and compensation for pollution damage (private law).

3.1 PUBLIC INTERNATIONAL LAW

3.1.1 Perspective of the Gulf of Guinea region

The 1958 Geneva Convention on the law of the sea was concluded at the time when many African countries were unable to participate in its elaboration. Moreover, because this law is characterized by many uncertainties, many solutions to important issues regarding the law have been postponed within the last decade. Countries of the GOG have in general exercised some laxity in ratifying conventions concluded under the auspices of IMCO and later IMO that deal with MOP.

This is partly due to the fact that until very recently (1980s), the merchant fleet of these countries was either non-existent or extremely small. Also, because the region has not yet suffered a major oil disaster, not much attention has been paid to the problem of MOP. The increasing rate of oil exploration and exploitation in the region now warrants a complete change of attitude if a well-designed legal and institutional framework to prevent and manage oil spills has to be put in place. The institutionalization of any such framework will nevertheless have some shortcomings to overcome, given that current international treaty law does not provide complete legal protection against all sources of MOP. For example, as regards pollution from ships, the GOG is not among 'special areas' that are protected by OILPOL 54 and annex I of MARPOL 73/78. Although the 1973 convention does include a provision for contracting parties to notify other states likely to be affected by incidents liable to threaten substantial pollution damage, no adequate provision is made in any global convention for cooperation among affected states in dealing with pollution emergencies.

3.1.2 United Nations Convention on the Law of The Sea

Part II of the United Nations Convention on the Law of the Sea (UNCLOS) deals with the protection and preservation of the marine environment. Relevant articles of this convention are stated and commented below.

*Article 194 (*Pollution of marine environment)

This article provides measures to prevent, reduce and control pollution of the marine environment. These include:

1) States shall individually or jointly as appropriate, take all measures consistent with this convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavor to harmonize the policies in this connection….

It is the author's opinion that, countries in the GOG should apply such harmonization in policies when it comes to matters of MOPL. Such a join approach will encourage those countries in the region that are not parties to international conventions on MOP to take concerted action towards safeguarding the region from oil pollution.

Article 194 3(b) (Pollution from vessels)

Measures shall be taken to minimize to the fullest possible, the extension of pollution from vessels, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, preventing intentional and unintentional discharges, and regulating the design, construction, equipment, operation and manning of vessels.

This article provides the legal backing for coastal states to incriminate those vessels that pollute in their coastal waters. But this can only be done if a country is a state party to the convention under which provisions the country is pursuing the polluter. This thus calls for an urgent need for all the countries in the GOG to ratify international conventions dealing with MOP.

Article 197

States shall cooperate on a global basis and as appropriate on a regional basis directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this convention, for the protection and preservation of the marine environment, taking into account characteristic regional features.

The provisions of article 197 therefore give the legal backing for states of the GOG to set up a regional legal framework to safeguard against MOP. Such a framework should be based on general principles because the different countries in the region have different legal systems, for example, Nigeria is a common law country while

Ivory Coast is a civil law country. Cameroon is a mixture of both common and civil laws systems.

Article 200

States shall co-operate, directly or through competent international organizations, for the purpose of promoting studies, undertaking programs of scientific research and encouraging the exchange of information and data acquired on pollution of the marine environment. They shall endeavor to participate actively in regional and global programs to acquire knowledge for the assessment of the nature and extent of pollution, exposure to it, and, its pathways, risks and remedies.

There is no institutional framework in the GOG that can execute the recommendations. The author thus suggests that, GOG states should set up an institution through which research on MOP can jointly be carried out. Such an institution should request for assistance (financial and technical, to name a few) from the relevant international organizations like the IMO and UNEP.

Article 203 (Concerns so-called developing states)

Developing states shall, for the purposes of prevention, reduction and control of pollution of the marine environment or minimization of its effects, be granted preference by international organizations in, (a) the allocation of appropriate funds and technical assistance (b) the utilization of their specialized services.

Unfortunately, there are no 'specialized services' in the GOG region that can be used for the stated purposes. The situation now requires that, GOG states present them selves as a single front and request for such preference from international organizations like the IMO when it comes to matters of MOP, especially with the alarming increase in the involvement of the oil industry in the region during the last few decades.

Article 207

Requires that, (1) states adopt laws and regulations to prevent, reduce and control pollution of the marine environment from land-based sources, including rivers, estuaries, pipelines and outfall structures, taking into account internationally agreed rules, standards and recommended practices and procedures, (2)…(3) states endeavor to harmonize their policies in this connection at the appropriate regional level, (4)…

The presence of the Chad-Cameroon pipeline amongst others makes the need to set up structures for the implementation of article 207 in the GOG region more pressing now than ever before.

Article 211 (6) (a)

…the coastal states, after appropriate consultations with the competent international organization and other states concerned, may, for that area, direct communications to that organization, submitting scientific and technical evidence in support and information on necessary reception facilities. Within …

It is the opinion of the author that, such evidence be prepared jointly by all the GOG states at the earliest possible time and submitted to IMO for the regional waters to be declared as 'particularly sensitive areas' or special area under annex I of MARPOL 73/78 where oil discharges of any kind are completely prohibited.

3.2 REGULATORY LAW

3.2.1 The 1954 Oil Pollution Convention (OILPOL) and its Amendments

The 1954 Oil Pollution Convention delineates areas where the discharge of oil or oi1y mixtures by tankers is prohibited. 'oily mixtures' as used here means all mixtures in which the proportion of oil is equal or greater than 100 parts of oil to one million parts of the mixture (i.e., 100 ppm). 'oil' embraces crude oil, fuel oil, heavy diesel oil and lubricating oils. The prohibited zones include all sea areas within fifty

miles of the nearest land and also a number of special areas where this distance is extended to 100 or even 150 miles. The conditions applying to discharge are more or less the same as those prescribed in the 1969 amendments to the 1954 convention. It is to be noted that the system of special areas where all discharges are absolutely prohibited has been reintroduced. Unfortunately, the GOG coastal areas are not included. In all cases oil residues left after decantation must be kept on board. Contracting states are required to set up facilities for the reception of this waste in their principal ports.

The 1973 Oil Pollution Convention, which was opened for signature on 15th January 1974, came into force 12 months after its acceptance by 15 states representing at least 50% of the world's merchant shipping. As of 1st January 1978 no state in the GOG coastal areas had ratified it (FAO/UNEP, 1979). This is proof of the laxity of states in the GOG in ratifying MOP conventions. As mentioned in chapter 2, many countries in the region were involved in oil exploitation and production since the 1930s and 1940s yet did not ratify this convention. This therefore limited these countries from pursuing polluters legally.

3.2.2 Prevention of pollution from shipping accidents

The International Regulation for Preventing Collision at Sea (1960-1972) lays down basic rules for avoiding situations liable to cause shipping accidents. These include a provision on the establishment of Voluntary Traffic Separation Schemes (VTSS). The rules laid down in 1960 came into force in 1965. They were amended in 1972 by a convention that came into force in July 1977 providing for obligation of traffic separation schemes.

As of 1st January 1978, the 1960 texts had been accepted by Cameroon, Gambia, Ivory Coast, Liberia and Nigeria, and the 1972 text by Cape Verde, Ghana, Liberia, Nigeria and DRC (FAO/UNEP, 1979). As per IMO status of convention of February 2003, this is the convention with the highest rate of ratification by coastal states of this region; 19 of the 20 countries have ratified it, the lone coastal state that has not

yet ratified it being Guinea-Bissau. It is thus recommended that, this lone country join the other states in the region by acceding to the convention. This will give all the coastal states in the region the legal backing to pursue polluters.

3.2.3 The 1969 Intervention Convention

The 1969 International Convention on Intervention in cases of Oil Pollution Casualties provides for coastal states faced with a grave and imminent danger to their coastline or related interest from pollution or threats of' pollution of the sea by oil following a maritime casualty may take such action on the high seas as may be reasonably necessary to avert or mitigate the danger. Certain procedures or notifications and consultations are envisaged by the convention, although these may be waived in cases of extreme urgency. The severity or intervention measures must be in proportion to the damage that the coastal state sustained or with which it is threatened. In the event of excessive measures the coastal state may be required to pay compensation. Provision is made for the compulsory submission of any disputes between parties to conciliation and arbitration.

The convention came into force in 1975 and as of 1st January 1978, only Liberia and Senegal had ratified it (FAO/UNEP, 1979). It was later ratified by Angola, Benin, Cameroon, Ivory Coast, Equatorial Guinea, Gabon, Liberia, Mauritania and Senegal as of 28th February 2003. Amongst all the countries of the study area, only Liberia and Mauritania have ratified the Intervention Protocol 73 (IMO status of conventions, 2003). It is recommended that, GOG states once more get involved in the ratification of this convention to pave the way for violators of the convention to brought to justice.

3.2.4 International Convention for the Prevention of Pollution from Ships (MARPOL) 73/78

As regards the International Convention for the Prevention of Pollution from Ships 73/78, ((MARPOL 73/78), it has been suggested that it should include provisions requiring administrative authorities to carry out publicity campaigns, organize

educational and orientation programs for the maritime community as well as the public at large including students, and communicate and co-operate with related industries with maritime interests (Mukherjee, 2002). In some jurisdictions these would not be considered as proper subject matters for legislation. Mukherjee argues that, on the other hand, it is generally recognized that given the public sensitivity towards environmental issues, it would not be unreasonable to include such provisions in the national legislation. In the author's opinion, this should be included in national law by states in the study area because of the serious involvement of the oil industry in the area and the dependence of the population in the area on sea resources like fishing and minerals, to name a few.

The practical effect of legislation is to provide a manageable framework for the enforcement of the primary and regulatory provisions of applicable international conventions, which for current purposes will be annex I of MARPOL 73/78 and other relevant conventions on MOP. MARPOL 73/78, like most international conventions, is thus enforced through the various national laws of the states parties. Annex I of MARPOL 73/78 contains provisions, which establish standards and criteria to control the discharge of oil into certain sea areas. Discharges are generally prohibited but under specific circumstances it may be allowed in specified limited amount.

3.2.4.1 An overview of jurisdiction under MARPOL 73/78

MARPOL, like other IMO conventions on related subjects, recognizes three types of control or jurisdiction over ships, depending on the relationship between the ship and the country. These are flag state, port state and coastal state. The flag state has jurisdiction to prescribe rules implementing MARPOL 73/78 with respect to its flag vessels wherever they may be, and can pursue enforcement against them wherever violations have occurred. Port state enforcement is authorized under MARPOL and UNCLOS when violations occur in the port or terminal of the state or threaten the waters under the state's jurisdiction. The port state can also take enforcement action when the violation takes place beyond any state's jurisdiction, upon receiving request

from the flag state or the damaged or threatened coastal state to investigate and proceed against violations. The coastal state has jurisdiction to promulgate regulations governing vessels in internal waters, to protect its environment, and to prevent, reduce and control pollution in conformity with international law in its territorial sea and EEZ, and has the jurisdiction to enforce regulations prescribing violations committed under its jurisdiction, subject to the rules of international law.

As such, the gathering, presenting and admitting of evidence for MARPOL violations must be carefully developed by states, where practicable in cooperation with other states, for the effective enforcement of the convention. This is the type of cooperative spirit that is recommended for the countries of the GOG region.

As of 1st January 1978, Ghana, Ivory Coast, Liberia, Nigeria and Senegal had become parties to the 1954 convention as amended in 1962 and 1969. On the other hand, the 1971 amendments had been ratified only by Ivory Coast and Liberia (FAO/UNEP, 1979). As of Feb. 28th 2003, IMO status of convention shows that the following countries in the GOG have ratified annex I of MARPOL 73/78: Angola, Benin, Ivory Coast, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea, Liberia, Mauritania, Nigeria, Sao Tome & Principe, Senegal, Sierra Leone, Togo and Namibia.

3.2.4.2 Compliance

In order to enforce the provisions of MARPOL 73/78 a state party must give full effect to the provisions of the convention under its national law. This includes the passing of enabling relations in respect of all the technical annexes to which the state is bound, and the incorporation of a framework of sanctions against violations within the jurisdiction of a state party. Compliance with MARPOL 73/78 is not only a matter for the administration of the state party. Ship-owners, operators, inspectors, ships' officers, crews, coast guard authorities, marine police, and port and terminal operators are among the specific groups, who should be made well aware of the requirements and obligations of the convention. It is ultimately the compliance and

cooperation of all state parties that contributes to an effective enforcement strategy (IMO MEPC 41/12).

Such cooperation of states parties does not exist among the GOG states. Considering that some countries in the region (e.g. Cameroon) involved in oil exploitation and production are not state parties to MARPOL 73/78, it makes it difficult to prosecute those who do not comply with the convention. It even makes life more difficult for those countries that are states parties to enforce the convention against the violators when the spill involves a neighboring state that is not a state party to the convention.

3.2.4.3 Violation

Article IV provides that any violation within the jurisdiction of any state party shall be made punishable under the law of that party. State parties are also required to provide sanctions against related violations, which include by extension, such provisions as, the mechanisms for admitting evidence and securing prosecutions against violations. In providing sanctions under national law to take procedures against offenders, a state party is required to:

1) apply these procedures to their own flagships wherever the violation may be;
2) take proceedings against their own flagships if sufficient information and evidence of a violation are provided by another state party and inform that state party and IMO of the actions taken;
3) take proceedings against other ships which commit a violation within their jurisdiction or inform the administration of the ship and provide information and evidence of the violation;
4) make penalties adequate in severity to discourage violations and be equally severe irrespective of where they occur.

While UNCLOS names the nature of sanctions to be imposed for certain violations (e.g. monetary penalties), MARPOL 73/78 does not. The type of sanctions applicable to varying violations under the convention is a matter for determination by the individual state party and may be a function of several legal, political and economic circumstances. Moreover, the approach to sanctions in different legal systems (e.g.

civil law and common law jurisdictions) may also differ. However, sanctions will normally be of an administrative (non-judicial) or a penal nature. As sanctions can be very effective as a compliance tool, it is necessary for states to prescribe sanctions that are at least in harmony with applicable systems in neighboring states or territories so as to avoid the perception that some states have less stringent sanctions than others, as this is one way of insinuating a 'safe haven' to the potential polluter. On the other hand, sanctions may take voluntary mitigation efforts and self-reporting into account. Such a progressive system is easier and less expensive to police, and preserves prosecutorial assets for larger cases where substantial harm has occurred.
The tracking down of violators of MARPOL 73/78 may only be executed in the GOG through this approach because, there are many countries that have not ratifies the convention. Such a harmonized regional arrangement will cover certain gaps.

3.3 PRIVATE LAW WITH RESPECT TO MARINE OIL POLLUTION IN THE GULF OF GUINEA

In international maritime legislation, ‘rule making’ in the domain of private law is of particular importance. In making private law, there is a distinction between the objectives of regulatory law and those of private law. Regulatory conventions such as MARPOL 73/78 are aimed at regulating maritime activities for the protection of the wider public interest. To achieve this, regulatory conventions are universal in scope. This is in an attempt to strike a relatively satisfactory compromise between its state parties. In the domain of private law conventions, national and private interests with economic and other implications are more at stake; with the result that international rule making in private law lacks uniformity (Mukherjee, 2002). This can be illustrated using the example of the numerous compensations schemes that have been put into existence both by the oil industry and the international community since the *Torrey Canyon* oil disaster of March 1967 (chapter 2).

Politics plays an important role in the formation of an international framework for the funding of compensation to victims. Public revulsion to the headline-hitting

disasters of *Amoco Cadiz (1978)* and the *Exxon Valdez (1989)* among others, added fuel flames of urgency to establish not only quick response procedures but compensation regimes also. Hodges & Hill (2001) argue that, it is safe to say that major legislation, whether international or national, has intended to emerge as a result of major accidents having actually occurred and substantial harm or damage actually done. Only following such catastrophes are the legislators stirred into serious positive thinking and resultant legislation.

3.3.1 Liability and compensation

In 1969, a conference convened by IMO adopted a convention dealing with the civil liability of the ship or cargo owner for damage suffered as a result of pollution casualty. The purpose of the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC 69) was to ensure that adequate compensation was paid to victims and the liability was placed on the ship-owner. Some delegates to the 1969 conference felt that the liability limits established were too low, and that the compensation made available in some cases, therefore, might prove to be inadequate (Focus on IMO, 1998). As a result, another conference was convened by IMO in 1971, which resulted in the adoption of a convention establishing the International Fund for Compensation for Oil Pollution Damage. The convention came into force in 1978 and the Fund has its headquarters in London.

Unlike the CLC, which puts the onus on the ship-owner, the Fund is made up of contributions from oil importers. The idea is that, if an accident at sea results in pollution damage which exceeds the compensation available under the CLC, the Fund will be available to pay an additional amount, while the burden of compensation will be spread more evenly between ship-owner and cargo interest. The limits of liability in the two conventions were greatly increased through amendments adopted by a conference held in 1992.

3.3.1.1 International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC 69)

This convention was adopted on 29th November 1969 and entered into force on 19th June 1975. The aim of the CLC is to ensure that adequate compensation is available to persons who suffer oil pollution damage resulting from maritime casualties involving oil-carrying ships. The convention placed the liability for such damage on the owner of the ship from which the polluting oil escaped or was discharged.

Subject to a number of specific exceptions, this liability is strict. It is the duty of the owner to prove in each case that any of the exceptions should in fact operate. However, except where the owner has been guilty of actual fault, he may limit his liability in respect of anyone incident to 133 Special Drawing Rights (SDR)[1] for each ton of the ship's gross tonnage, with a maximum liability of 14 million SDR for each incident. The convention requires ships covered by it to maintain insurance or other financial security in sums equivalent to the owner's total liability for one incident. It applies to all seagoing vessels actually carrying oil in bulk as cargo, but only ships carrying more than 2,000 tons of oil are required to maintain insurance in respect of oil pollution damage.

Summarily, the significant provisional features of the 1969 CLC convention are:

1. Strict liability;
2. Liability could only be laid upon the tanker owner;
3. There were certain specific exceptions to liability which were, (a) an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character, (b) an act or omission done with intent to cause damage by a third party, or (c) the negligence or other wrongful act of any government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function;
4. Limitation of liability;

[1] *SDR stands for Special Drawing Rights, which is a unit of currency used by the International Monetary Fund.*

5. Article 7- 'The owner of the ship registered in the contracting state and carrying more than 2000 tons of oil in bulk as cargo, shall be required to maintain insurance or other financial security such as the guarantee of a bank or a certificate delivered by an international compensation fund is fixed by applying the limits of liability prescribed in article 5 paragraph I to cover this liability for pollution damage under this convention'.

The convention covers pollution damage resulting from spills of persistent oils suffered in the territorial waters of a state party to the convention. It is applicable to ships, which actually carry oil in bulk as cargo. One shortcoming of this convention is that, spills from tankers in ballast or bunker spills from ships other than tankers are not covered, nor is it possible to recover costs when preventive measures which are so successful that no actual spill occurs. The ship-owner cannot limit liability if the incident occurred as a result of the owner's personal fault.

As of 28th February 2003, Benin, Ivory Coast, Equatorial Guinea, Gabon, Gambia, Ghana, Mauritania, Nigeria, Sao Tome & Principe, and Senegal had ratified CLC 69 (IMO Status of convention, 2003). This constitutes 37% of ratification by GOG states of this convention. The serious involvement of the oil industry in the region makes this quiet low.

3.3.1.2 The 1992 CLC Protocol

The protocol of 1992 was adopted on 27th November 1992 and entered into force on 30th May 1996. This protocol changed the entry into force requirements by reducing from six to four the number of large tanker-owning countries that are needed and by removing the ratification by the USA as a pre-requisite for its entry into force. The compensation limits are those originally agreed in 1984:

- For a ship not exceeding 5,000 gross tonnage, liability is limited to 3 million SDR;
- For a ship 5,000 to 140,000 gross tonnage, liability is limited to 3 million SDR plus 420 SDR for each additional unit of tonnage;

- For a ship over 140,000 gross tonnage, liability is limited to 59.7 million SDR.

The 1992 protocol also widened the scope of the convention to cover pollution damage caused in the EEZ or equivalent area of a state party. The protocol covers pollution damage as before but environmental damage compensation is limited to costs incurred for reasonable measures to reinstate the contaminated environment. It also allows expenses incurred for preventive measures to be recovered even when no spill of oil occurs, provided there was imminent threat of pollution damage.

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

From 16th May 1998, parties to the 1992 Protocol ceased to be parties to the 1969 CLC due to a mechanism for compulsory denunciation of the "old" regime established in the 1992 Protocol. However, for the time being, the two regimes co-exist, since there are a number of states which are party to the 1969 CLC and have not yet ratified the 1992 regime that is intended to eventually replace the 1969 CLC. The 1992 protocol allows for its states parties to issue certificates to ships registered in states, which are not party to the 1992 protocol, so that a ship-owner can obtain certificates to both the 1969 and 1992 CLC, even when the ship is registered in a country that has not yet ratified the 1992 protocol. This is important because a ship, which has only a 1969 CLC, may find it difficult to trade to a country that has ratified the 1992 protocol, since it establishes higher limits of liability.

Article II

This deals with the exclusive application of the convention and states that the convention shall apply exclusively-

(a) to pollution damage caused:

(i) in the territory, including the territorial sea, of a contracting state, and

(ii) in the EEZ of a contracting state, established in accordance with international law, or, if a contracting state has not established such a zone, in an area beyond and adjacent to the territorial sea of that state determined by that state in accordance with international law and extending not more than 200 nautical miles from the base lines from which the threat of its territorial sea is measured;

(b) to preventive measures, wherever taken, to prevent or minimize such damage.

Emphasis is put on 'contracting state', indicating that only states that are parties to the convention may benefit from it. Considering that only a few states (states that have ratified are mentioned below) in the GOG region are members, the whole region may be in jeopardy in case a major oil disaster occurred.

*Article VII (*Compulsory insurance)

For the first time in the history of ocean carriage of goods, a form of compulsory insurance coupled with a requirement to exhibit current evidence of it is prescribed for sea carriers of crude oil. It was a provision of the 1969 CLC that every ship registered in a contracting state and carrying more than 2000 tons of oil in bulk as cargo, shall obtain and maintain insurance or other form of security to cover the sum reached by a calculation made in accordance with the provisions of article V of that convention. This same requirement is preserved in CLC 1992 (paragraph 1 of article VII): *a certificate issued by the appropriate authority of a Contracting State attesting to the fact that adequate insurance or alternative security has been taken out.* Insurers under the ordinary range of their third party liability cover will provide this in practice. In the case of oil pollution cover it will be up to the extent and limit of this convention's provisions. Insurers who have provided oil pollution cover are

exposed to direct action from third parties (article VII paragraph 8) as they have placed themselves in the guarantors.

Limitation of liability is available to the insurer for oil pollution damage and this availability is not prejudiced by the fact that the tanker owner himself may have been denied the right to limit his liability by reason of the application of the provisions of paragraph 2 of article V. Apart from the right of limitation, he may also make use of any other defenses to liability which the owner himself would have been entitled to put forward with the exception, for obvious reasons, of bankruptcy or winding up. The insurer may have been guilty of misconduct, which was the direct cause of the pollution damage. Paragraph II lays the burden upon each contracting state that it should ensure that every ship which is actually carrying more than 2000 tons of oil in bulk as cargo, wherever it may be registered, has insurance or other equivalent security in place and currently in force when the vessel enters or leaves a port in its territory or arrives at or vacates an off-shore terminal within the limits of the territory of the state in question.

Article VIII (Rights of action - limitation period)

The period beyond which an action for compensation is extinguished is three years commencing from the date when the damage occurred. However, in no case shall an action be brought after six years from the date of the incident that caused the damage. Where the incident consists of a series of occurrences, the six-year period shall run from the date of the first such occurrence. At first sight the wording of this article seems to contain a conflict and to allow a claimant a second chance if he misses the first deadline[2]. If the court holds that only one prescriptive period of three years lies with a "long-stop" provision, then after six years from the first occurrence

[2] *According to Hodges & Hill (2001), one judge, in clarification, gave a practical example of how the two periods would apply to an oil spill overall. A ship might sink, but some or possibly all of the oil might not escape until after the elapse of three years dating from the sinking. So a claim in respect of pollution damage caused by the escaped oil could be correct if it was brought within six years of the date of the sinking but any oil that might not have escaped until after six years could not be validly brought.*

no action can be brought to enforce any claim whether for losses already sustained or for losses apprehended.

The IMO status of convention shows that, as of 28th February 2003, the following states in the study area had ratified the CLC protocol 1992: Angola, Cameroon, Congo, Gabon, Ghana, Guinea, Liberia, Nigeria, Sierra Leone and Namibia.

3.3.1.3 Fund Convention 1971

Fund Convention, 1971 stands for The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage. It was adopted on 18th December 1971 and entered into force on 16th October 1978. The motivating force behind the setting up of this convention was the recognition by the oil industry that the shipping industry should not be obliged to shoulder the full burden of responsibility for the consequences of oil pollution damage from an escape or spill from a ship. The idea was to provide supplementary compensation from funds accumulated by contributors by way of levies made upon receivers of crude heavy oil whose business residences are within countries that are contracted by the convention. Another main reason behind the creation of the Fund convention 1971 was that, although the 1969 CLC 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 conference.

Scenarios in which the Fund was designed to be operative were:

- where CLC was not applicable and thus no liability arose under it;
- where a tanker owner was unable to fulfill his obligations under CLC;
- where the financial guarantees provided or the pollution insurance cover was inadequate;
- where the value of damage caused by the escape of oil exceeded the offending tanker's CLC liability.

The Fund convention does not apply in the following situations:

- damage resulting from war, hostilities or insurrection;

- oil spilled from a war ship or a ship under government ownership engaged in non-commercial operations;
- if and when the claimant victim was unable to show conclusively that the damage was directly consequent upon and incident in which one or more vessels were involved.

Some states objected to the regime established, since it was based on the strict liability of the ship-owner 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 felt that the limitation figures adopted were likely to be inadequate in cases of oil pollution damage involving large tankers. They therefore wanted an unlimited level of compensation or a very high limitation figure.

In the light of these reservations, the 1969 Brussels conference considered a proposed compromise to establish an international fund, to be subscribed to by the cargo interests, which would be available for the dual purpose of, on the one hand, relieving the ship-owner of the burden imposed on him by the requirements of the new convention and, on the other hand, providing additional compensation to the victims of pollution damage in cases where compensation under the 1969 CLC was either inadequate or unobtainable. It is supplementary to the 1969 CLC.

The main aims of Fund convention 1971(article 2) include:-

1) Provide compensation for pollution damage to the extent that the protection afforded by the 1969 CLC is inadequate.
2) Give relief to ship-owners in respect of the additional financial burden imposed on them by the 1969 CLC, such relief being subject to conditions designed to ensure compliance with safety at sea and other conventions.
3) Give effect to the related purposes set out in the convention.

As mentioned in (2) above, the Fund is under an obligation to pay compensation to states and persons who suffer pollution damage, if such persons are unable to obtain

compensation from the ship-owner from whose ship the oil escaped or if the compensation due from such owner is not sufficient to cover the damage suffered. Under Fund convention 1971, victims of oil pollution damage may be compensated beyond the level of the ship-owner's liability. However, the Fund's obligations are limited so that the total payable to victims by the ship-owner and the Fund shall not exceed 30 million SDR for any one incident. In effect, therefore, the Fund's maximum liability for each incident is limited to 16 million SDR (article 4).

However, if there is no ship-owner liable or the ship-owner responsible is unable to meet his liability, the Fund will be required to pay the whole amount of compensation due. Under certain circumstances, the Fund's maximum liability may increase to not more than 60 million SDR for each incident. With the exception of a few cases, the Fund will be obliged to pay compensation for oil pollution damage to the victims who are unable to obtain adequate or any compensation from the ship-owner or his guarantor under the 1969 Convention.

The Fund's obligations to pay compensation are confined to pollution damage suffered in the territories including the territorial sea of contracting states. The Fund is also obliged to pay compensation in respect of measures taken by a contracting state outside its territory. The Fund can also provide assistance to contracting states that are threatened or affected by pollution and wish to take measures against it. This may take the form of personnel, material, credit facilities or other aid. In connection with its second main function, the Fund is obliged to indemnify the ship-owner or his insurer for a portion of the ship-owner's liability under the liability convention. This portion is equivalent to 100 SDR per ton or 8.3 million SDR whichever is less.

The Fund is not obliged to indemnify the owner if damage is caused by his willful misconduct or if the accident was caused even partially because the ship did not comply with certain conventions. The convention contains provisions on the procedure for claims, rights and obligations, and jurisdiction. All persons who receive oil by sea transportation in contracting states should make contributions to

the Fund. The Fund's organization consists of an assembly of states, a secretariat headed by a director appointed by the assembly; and an executive committee.

As of 28th February 2003, this convention had been ratified by Benin, Cameroon, Ivory Coast, Gabon, Ghana, Mauritania and Nigeria (IMO status of conventions, 2003). Only contracting states benefit from the Fund convention, yet only seven GOG states ratified Fund 71.

3.3.1.4 Fund Protocol 1992 (Fund Convention 1992)

In the same way that CLC 1992 is a revision and economic update of CLC 1969, Fund 1992 is a revision and economic update of Fund 1971. Its aims are that people who have suffered loss or damage by reason of pollution resulting from the escape of oil from ships should be offered, and actually receive, adequate compensation.

It was clear that in the aftermath of major oil spills like Amoco Cadiz and Exxon Valdez, limited funds of polluters, would not generate enough money to fully compensate all victims with proven claims nor approach the level of adequate and sufficient compensation. A recognition by the oil industry that they must play a part in the regime of compensation, even though they have never openly admitted that their part should be the dominant.

Fund convention 92 is applicable in the territory and EEZ of a contracting state or, in the absence of any such defined zone, an area extending seaward from the territorial water boundary for a distance of not more than 200 nautical miles. There are three circumstances where the Fund can be used to compensate victims and when the provisions of CLC have been shown to be inadequate:

1. where there is no liability on the vessel under 1992 CLC (for example, because it has not been possible to bring the occurrence within one or other of the exceptions to liability in CLC Article 3);
2. where the polluter cannot meet his obligations in full or any financial security furnished on his behalf by an insurer or other guarantor is insufficient, thus

depriving the innocent victim(s) of his/their chance to get full redress for the losses he/they have suffered;

3. Where, when successfully constituted, the vessel's limitation fund does not amount to the total value of the damage arising from the incident.

Obliged to contribute to the build-up of the fund are those who, in a particular calendar year, have received more than 150,000 tons of oil. To be classed with the attendant obligation to contribute, oil should be either crude or fuel (see appendix I for definitions). CLC 1992 only covers pollution by bunker fuel if the bunkers are at the time on board a tanker laden with oil as cargo or a vessel capable of carrying oil and so carrying it as cargo. It is not concerned with pollution by bunkers that may have spilt oil from a dry cargo vessel or, for example, a chemical carrier. This constitutes an important shortcoming to the convention.

It is evident that since the 1969 inception of international regimes for liability and compensation for victims of pollution by oil from ships, bunker spills from non-tankers or vessels incapable of carrying oil as cargo have not been given coverage. It was not until the UK made its own domestic move to introduce legal remedies for bunker pollution from dry cargo or chemical carriers that the seriousness of bunker spills in addition to the catastrophic size and effect of oil cargo spills was openly addressed. This led to the emergence of a freestanding and independent convention on bunker pollution. Article 3 of Fund 92 deals with the liability of the ship-owner. Liability, as in CLC, is strict and where any of those persons as defined within the ship-owner category are liable they shall be jointly and severally liable. Note that as the international liability and compensation regimes have deliberately excluded bunker spills from their strict liability rules, the remedies available for victims have been restricted to common law remedies as in the UK.

As of 28th February 2003, the following states in the study area had ratified the 1992 Fund convention: Angola, Cameroon, Congo, Gabon, Ghana, Guinea, Liberia,

Nigeria and Namibia (IMO status of convention, 2003). Again it is worth noting the laxity of the GOG states to ratify MOP conventions.

It should be noted that the ratification in itself is not enough to bring about effective legal protection of the marine environment. Implementing national legislation and administrative measures will be required for this purpose. Technical assistance to the competent government authorities which could be envisaged in this area would also be likely to facilitate a degree of regional harmonization in the methods and procedures of enforcement and compliance control at the national level.

CHAPTER 4

SAMPLE HARMONIZED MARINE OIL POLLUTION LEGISLATION, AN APPROACH FOR THE GULF OF GUINEA

4.0 INTRODUCTION

This chapter covers a sample regional legal framework for MOP that could be adopted, mutatis mutandis, to suit the Gulf of Guinea. It is based on action at different levels, beginning with the global level, where the need for states to ratify international conventions on MOP is highlighted. After becoming state parties to international conventions, states are expected to integrate the provisions of such conventions into their national laws for implementation. The next step is to join a regional implementation structure with other states in the region that have also done the same. The final stage involves the formation of a regional legal framework through the merging of various structures that may be bilateral or multilateral in nature. Finally, a model law based on that of the USA on MOP is briefly discussed.

4.1 ACTION LEVELS AND PRIORITIES

International legal problems of marine environment protection in the region of the GOG tend to arise primarily in relation with outside users. These include oil pollution from foreign ships or from offshore drilling activities by foreign concession holders, rather than directly between the coastal states concerned. There may be scope, however, for joint action by governments in the region to prevent, or reduce the effects of environmental hazards such as MOP.

4.1.1 Action at the global level

As described in chapter three, relevant IMO conventions on MOP control include:

- MARPOL 73/78
- CLC 1969
- CLC 1992
- Fund Convention 1971
- Fund Convention 1992
- Intervention Convention 1969,
- OPRC 1990
- Bunkers Convention 2001.

Taking each of the above conventions in turn and calculating the percentage of ratification by the countries in the GOG, the following results can be obtained:-
MARPOL 73/78: 59%, CLC convention 1969: 37%, CLC convention 1992: 37%, Fund convention 1971: 30%, Fund convention 1992: 37%, Intervention convention 1969: 37%, OPRC 1990: 22%, and Bunkers convention 2001: 0%. The general percentage of ratification by all the countries in the GOG of international conventions on MOP is therefore 32%. Considering the serious involvement of the oil industry in the area as discussed in chapter two, the entire region is in potential danger. Despite the large size of ships nowadays and the large quantity of bunkers that these large ships carry, no country in the GOG has ratified the Bunkers convention, 2001.

No countries in the GOG region have ratified all of these conventions.
Because these conventions offer a number of legal safeguards and remedies against pollution caused by foreign vessels, ratification would provide the states with minimum measures of protection, including uniform standards of conduct and enforceable sanctions in cases of violation. It would also give them a stronger say in future elaboration and improvement of international controls, mainly through IMO and especially its marine environment protection committee, where participation by

West African coastal states has been less significant than it was at the United Nations conference on the Law of the sea.

There are a number of ways to promote wider participation in existing international agreements. Initial action would involve bringing the agreements to the attention of the competent national authorities and finding out the practical difficulties likely to hinder ratification. Awakening political consciousness and interest in the matter through special inter-parliamentary conferences and working groups could do this. For example, the recommendations of the 1974 inter-parliamentary conference of coastal states on the control of pollution in the Mediterranean Sea held under the auspices of the Inter Parliamentary Union (IPU) was co-sponsored by the United Nations Environmental Programme (UNEP). This resulted in positive action by several parliaments in terms of accelerating the ratification of relevant international conventions by governments in the Mediterranean Sea region (FAO/UNEP, 1979).

Coastal states of the GOG could take concerted action within the framework of IMO to have the whole region, or any suitable portion thereof, declared as a special area for purposes of pollution control under Annex I of MARPOL 73/78 (which presently does not list the GOG among 'special protected areas'). In this case, however, special technical specifications (with financial implications) such as the provision of specified reception facilities in ports would have to be met in the area. This approach has been successfully implemented in the Mediterranean. The author proposes that the requirements for the creation of the GOG as a 'special protected areas' should be met, and it should be created and maintained.

4.1.2 Action at the national level

4.1.2.1 Transformation of international conventions into national law

When a state becomes a party to an international convention by the process of ratification or accession, the legal effect of it is that the state then becomes bound by the convention and is therefore obliged to implement it by incorporation into its body

of national law. If the state so fails to implement the convention, it is nevertheless subject to it, with respect to other state parties, but it cannot enforce the convention against them, unless that convention becomes part of its national law by the legal process applicable in that state's jurisdiction (Mukherjee, 2002). The implementation of an international convention to which a state has become a party is therefore an essential step without which the state party cannot benefit insofar as the application of that law within its jurisdiction is concerned. It is a fundamental premise that the domestic constitutional law governs the application and effect of international conventions within the domestic legal order.

Implementation of international conventions is executed through two main systems, namely, monistic and dualistic methods. In the monistic method of implementation, an international convention can become part of the domestic law simply as a consequence of its ratification or accession by the state. This is supposed to be provided for in the domestic constitutional law of such a state. In such a case therefore, there is virtually no legislative action required for implementation. For a monistic method to be effective, the convention must be one that is 'self- executing' i.e. has direct effect or application. In general terms, a convention that directly confers rights or imposes obligations on individuals to which the state party is subject, is self- executing. Private law conventions such as the Salvage, CLC and Fund conventions have been held to be self-executing.

The dualistic system is said to prevail in jurisdictions where some form of legislative action is required for the implementation of an international convention, following its ratification or accession.

States of the GOG exercise both methods of implementation. Former UK colonies like Nigeria, practice the dualistic system while others that were colonized by France, like Ivory Coast, are monistic. Whether a state is monistic or dualistic, what matters is that it should ratify international conventions that deal with MOP and incorporate them into its national law. If all the states of the GOG were parties to the

relevant MOP conventions, it would be easier to establish a regional legal regime on MOP in the area.

Action will be needed at the national level (including state legislation) in order to cover the important gaps that exist in the national laws of the region. One of the handicaps in the countries concerned is the absence of well-defined national standards for the measurement and economic evaluation of marine pollution in general and MOP in particular, including technical specifications and codes of practice for the principal source of environmental damage.

A legislative action program for each state might therefore be envisaged, which should include a review of the general framework of environmental law and administration, with a view to adapting it to the special needs of marine pollution control. The long-range aim of such programs would be to ensure that within a reasonable time frame, all states concerned become equipped with national laws and standard-setting machineries commensurate with environmental priorities. Again it has to be emphasized that to be effective, legislative and administrative reforms must have the necessary technical (personnel/infrastructural) and budgetary support. While some external technical assistance undoubtedly will be necessary for this purpose, a considerable amount of relevant legal and administrative experience is already available in several states of the region, although for a number of reasons, including the language barrier, this experience is not readily accessible to other interested states. A first step therefore would be systematic inventory and exchange of available information and comparison of national laws and administrative institutions within the region. Such a regional institution is proposed in chapter five of this dissertation. This may lead to gradual harmonization and reciprocal adjustment of standards and practices. Whether the development of uniform rules or guidelines should subsequently be envisaged for the entire region is essentially a question of practical needs and feasibility, and must be decided for each particular pollution problem (in this case, MOP). In some cases, bilateral or sub-regional coordination between neighboring states would seem more appropriate. In other cases, a common approach

by all coastal states may be advisable in order to ensure uniform involvement conditions, as in the case of environmental standards for MOP.

However, there is a normal and understandable reluctance by the governments of GOG states to adopt unilateral national control measures that may have adverse economic repercussions on their own economy and place their industries at a competitive disadvantage internationally, unless they are assured, that other states in the region will adopt equivalent measures and standards. Such assurance can only be provided through the adoption of a regional program instrument and strong evidence of the firm commitment of all participating states.

4.1.3. Action at the Regional Level

4.1.3.1. Regional harmonization

Mukherjee argues that, speaking of uniformity in maritime law does not possibly refer to total uniformity in terms of national legal regimes. Sometimes, procedural uniformity is also contemplated in certain aspects such as in the regulatory maritime conventions like MARPOL. He goes further to say that, uniformity, in a complete sense may be rendered impossible to achieve, or may even not be desirable, because of differences in legal systems and legal thinking. This is the case with the GOG countries. Perhaps referring to harmonization of legislation rather than unification will better express the objective. Harmonization taking into account differences in legal traditions is the essence of regional uniformity in the field of MOPL. Some conventions are created solely to bring about uniformity in procedure such as port state control Memorandums Of Understanding (MOUs) whose common objective is also, to a large extent, regional uniformity of procedures. A similar approach for the study area with regard to MOPL is proposed in chapter five.

In determining which form of legal instrument(s) would be cost-appropriate for the specific requirements of the GOG, several factors need to be considered. Legal

instruments which may be convenient for a semi-enclosed or otherwise well-defined regional sea may not be the most suitable method to formulate principles of action for less coherent marine areas, especially where the problems are not uniformly shared by all states of the area. The range of possible legal instruments includes: (1) a joint declaration or convention with or without protocols, (2) regional or sub-regional treaties on specific issues requiring joint action, (3) bilateral agreements, (4) any combination of the above.

For substantive aspects of international cooperation in the GOG, such procedural aspects are obviously to be decided upon by the states concerned. In order to be meaningful, a regional instrument for MOP should go beyond a mere restatement of general concepts, as contained in part XII of the UNCLOS informal negotiating text. The author proposes that a binding statement of such a regional treaty should read like- 'the terms of this treaty are mandatory to all coastal and landlocked states in the GOG which have special interest in maritime transport or navigation and whose participation in the council of this treaty will ensure the representation of all major geographical areas in the GOG'. Yet whether formulated in a declaration or a convention, the style will inevitably be problematic (as exemplified by the 1972 Stockholm declaration on the human environment), laying down guidelines for government action rather than detailed treaty obligations or sanctions like mandatory penalties for those states in the region that may fail to respect the terms of such a treaty. Hence neither formula would limit the choice of subjects to be covered by the instrument.

The creation of regional institutions for MOP in the GOG should be directly linked to the adoption of a general legal instrument. The establishment of a regional institution will require special arrangements (like firm commitment to pay all mandatory dues) with participating governments and possibly with existing global or regional programs of cooperation. These arrangements should be part of the legal instrument that lays down the principles of regional cooperation.

In addition, there may be a need for formal measures at the sub-regional level to deal with problems of MOP that particularly affect two or more neighbouring states. Such measures must not be less stringent than those of the international community in general and the GOG region in particular.

4.1.4 Coordinated action

In preparing a regional program of legal action for MOP in the GOG, care must be taken to ensure its compatibility with applicable international rules and institutions both at the global level and at the level of existing regional obligations of participating states. Conformity with regional legal instruments should thus be ascertained not only with respect to such international agreements that directly concern MOP, but also with respect to other potentially relevant international rules. There are therefore two existing functional originations in the region whose membership covers the entire geographical range of the GOG and to whom the control of MOP is of direct concern. These are:

- the West and Central African States' Ministerial Conference on Shipping, which was established as a permanent organization at the 1976 Douala Conference. It was incorporated into the West and Central African Ports' Management Association.
- the Fishery Committee for the Eastern Central Atlantic (CECAF), established in 1961 pursuant to an FAO Council resolution. It superseded the earlier Regional Fisheries Commission for Western Africa.

The problems of MOP have so far not been included on the agenda of these bodies (FAO/UNEP, 1979). It would seem appropriate for an over-all regional action program to make optimal use of, and activate cooperation with these institutions.

4.1.4.1 Concept of Model Legislation

The use of model legislation for the regional harmonization of maritime law is an emerging trend. States with similar legal systems and common maritime policies and interest derive significant benefits from model legislation tailored to the common

needs and perspectives of a particular, geographical area where the political and socio-economic conditions are similar. For example, model Legislation for shipping Act as well as for regulatory marine pollution has been found to be extremely useful in the Caribbean region. Indeed, with respect to marine pollution, model legislation in the Spanish language has been developed in the civil law legislative style for use by the Spanish-speaking jurisdictions of the Wider Caribbean Region. Mukherjee states; '*The model legislation is most useful when it provides as sturdy a framework as possible, leaving room for modifications through square-bracketed texts, alternative texts and other devices to suit the individual needs of user jurisdictions'*. For harmonization in MOPL in the GOG to be achieved, this approach of model legislation is highly recommended in the region, but unlike the Caribbean region, language should not be the criterion used to delimit the region. This is because countries of the GOG region use heterogeneous official languages.

MOP is a matter of serious global concern and the MARPOL 73/78 convention, amongst others, seeks to regulate ship-generated pollution at an international level. However, for various reasons, the objective of a unified regime is often not achieved in practice. States with different kinds of legal systems have different ways of dealing with the convention domestically. Their perceptions of the law contained in the convention are sometimes different. The technical content of the convention is sometimes not fully understood which delays its speedy implementation.

Model legislation helps to overcome these obstacles. Particularly within the context of a regional initiative, where a concerted effort is made to realize the objectives of the convention and make it work in practice, the usefulness of model legislation becomes apparent. Ideally, in the interests of regional harmonization, there should be a degree of uniformity in the written law, there should be uniformity in its application, especially in terms of its enforcement and there should be uniformity of interpretation **(**Mukherjee, 2002**)**. These objectives are more easily achieved if the legislation of individual jurisdictions is based on a model, which serves as a common denominator. It is such a common denominator model for MPOL that is proposed by

the author in chapter five, such that the GOG states can adopt it into their national laws on MOP.

The consolidated version of MARPOL 73/78 contains numerous " unified interpretations" which define and explain many of the difficult technical provisions. The model legislation helps to smoothen out these difficulties by resorting to the unified interpretations when necessary. Fortunately, many states of the GOG are state parties to MARPOL 73/78 (with 59% ratification); this provides a good context for the use of the model legislation approach in establishing a regional legal framework that can take care of MOP in the area.

4.2 SAMPLE MODEL LEGAL FRAMEWORK

4.2.1 Oil pollution legislation of the USA

The model recommended is based on oil pollution legislation of the USA. Considering her wealth, the fact that it has a very long coastline and also because it is arguably the world's trendsetter in matters of responsibility for pollution by oil (or indeed any other chemically polluting substance), the USA has developed a unique and stringent MOPL.

The United States Oil Pollution Act, of 1990 (OPA 90) defines oil as …including but not limited to petroleum, fuel oil, sludge, oil refuse and oil mixed wastes other than dredged spoil". Such comprehensiveness of definition includes vegetable oils and animal fats.

Under OPA 90, a polluter in defense to liability of MOP would have to show by a preponderance of evidence that the discharge or substantial threat of discharge and the resulting damages or removal costs were caused solely by: (a) an act of God, (b) an act of war or (c) an act or omission of a third party.

4.2.1.1 The United States Coastguard

The United States Coastguard (US-CG) plays a prominent part when an oil spill occurs within the territorial jurisdiction of the USA. The coastguard, either independently or in conjunction with state or local government authorities, is empowered to mobilize its resources with a view to taking action to respond to the spill. It will already have in place contingency plans to cover each local area along the US coast, with plans to identify local contractors who are ready and able to provide response equipment. These plans also specify environmental areas of particular sensitivity. Armed with these plans the coastguard is well placed to control and keep a close watch on clean-up operations.

The owner of the spilling vessel is expected to pay his part and indeed will be required by the US-CG to do so only if he can demonstrate that he has on hand sufficient resources to carry out cleaning effectively with adequate financial back-up, otherwise the US-CG does it and then bill the polluter or his insurer.

The US Coastguard with the approval of the state in whose jurisdiction the spill occurred determines whether clean up is effectively and fully performed. If the State requires further clean up work and the owner refuses, the owner may find that such lack of co-operation will sound against him if he attempts to limit his liability under OPA's limitation provisions. Case law appears to underline the reality that the courts have little, if any, sympathy with the responsible party. The message seems to be that the US- CG, whether it is a monitor of a threat situation or leader of active response to actual spills, should not be out of pocket (i.e. all expenses of the US-CG must be recovered from the polluter). If responsible parties believe that the cost of the monitoring is higher than is reasonably required, they would hire contractors privately to do the job, at a lower rate, if possible. A similar organization like the US-CG is recommended here for the GOG.

What is of interest is that, the Federal Act gives liberty to any individual state legislature to pass laws with more stringent provisions than are contained in the Federal Act itself. This might be either imposing a firmer liability code ordering the

provision of greater security or providing for harsher penalties for a 'transgressing' tanker. An example of a state whose domestic legislation is harsher than OPA 90 is California. This approach is recommended for the GOG, where individual states can use the regional MOPL as a measuring rod to set up more stringent national laws on MOP. Thus in an event where a regional legal framework for MOP is to be set up for the GOG, such provision should be provided for in such a framework because some countries of the region e.g Sao Tome & Principe are more vulnerable to MOP than others (e.g Chad and Central African Republic) that are landlocked. OPA 90 set out to achieve two aims- firstly to make sure that the polluters pay as handsomely as possible (by imposing harsh tests for determining the responsible party's entitlement to limit) and secondly to ensure that as much funding as possible is available to provide sufficient compensation to victims of all pollution incidents.

Briefly comparing USA OPA 90 with the 1992 CLC protocol, perhaps the most obvious difference between the two pieces of legislation is in the area of limitation. The USA, not only in the field of pollution but also in the limitation on maritime claims, generally has always made it difficult for an offending vessel owner to succeed in limiting. US judges have also shown little compassion in this field. OPA 90 underlines this by making a distinct causal link between the successful application to limit and the fulfillment of all its regulatory duties which a tanker owner is expected to observe in, for example, safety measures, good navigation and seamanship, prompt response to government orders, to name a few. The 1992 convention does not make such a causal link. Limitation can be applied for and will likely go through successfully, the only obstacle to this being the establishment of an act or omission of an owner done with the intent to cause damage or loss or done recklessly in the knowledge that any such damage or loss would probably occur. The burden of proof, however, lies with the plaintiff and this is not an easy burden to discharge.

CHAPTER 5

PROPOSED HARMONIZED MARINE OIL POLLUTION LEGISLATION IN THE GULF OF GUINEA

5.0 INTRODUCTION

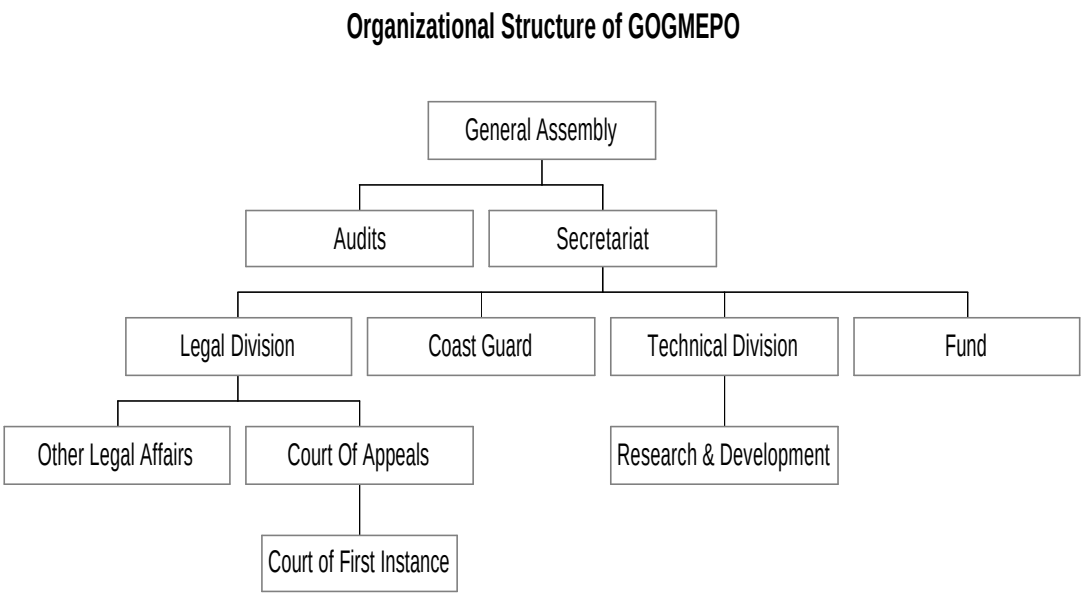
The author begins this chapter by proposing a regional organization to take care of any oil spills that may occur in the GOG area. The proposition includes the headquarters of the organization as well as its organizational structure. Each organ within the structure is briefly described and its function given. A model MOP Act for the GOG then follows. The chapter concludes with a proposal regarding the approach that could be used in implementing the Act.

Attention is also drawn to the fact that it would have been ideal for each GOG coastal states to own and run a coast guard, had it not been for the lack of resources (finance, equipment and trained personnel, to name a few). A regional coast guard to be run by GOGMEPO is nevertheless strongly recommended.

5.1 The Organization

The proposed regional organization shall be called ***'The Gulf of Guinea Marine Environmental Protection Organization, (GOGMEPO)'***. It should have its headquarters in Lagos, Nigeria. The reasons why Nigeria is chosen as the headquarters include, among others: (1) geographically, Nigeria is approximately at the centre of the GOG coastline and, (2) Nigeria is the first oil producing nation in sub-saharan Africa in general and the GOG in particular.

5.1.1 Organizational Structure of GOGMEPO



It is intended that membership to GOGMEPO shall be mandatory and should consist of all coastal and landlocked states in the GOG which have special interest in maritime transport or navigation and whose participation in GOGMEPO will ensure the representation of all major geographical areas in the GOG.

5.1.1.1 The General Assembly

'A President of the Assembly' shall head the assembly. The assembly shall be the highest governing body of the organization. It shall consist of all member states and it shall meet once every year in a regular session, but may also meet in an extraordinary session, if necessary. The assembly shall be responsible for approving the work programme, voting the budget and determining the financial arrangements of the organization. The assembly shall also elect the secretary general.

5.1.1.2 The Secretariat

The 'Secretary-General' shall head the secretariat. The assembly shall elect the secretary-general for a five-year term (renewable once), beginning after each regular

session of the assembly for that year. The secretary-general shall be the chief executive of the organization and shall manage the Fund.

Under this proposition, the secretariat is the executive organ of the organization and is answerable only to the assembly; it supervises the work of the organization. Between assembly sessions, the secretariat performs most of the functions of the assembly, except the function of approving the work programme, voting the budget and determining the financial arrangements of the organization. The secretariat may make recommendations to governments of GOG countries on maritime safety and pollution prevention issues as appropriate.

Other functions of the secretariat are to:

(a) coordinate the activities of the organs of the organization;
(b) consider the draft work program and budget estimates of the organization and summit them to the assembly;
(c) receive reports and proposals of the different divisions and submit them to the assembly and Member States, with comments and recommendations as appropriate;
(d) enter into agreements or arrangements concerning the relationship of the organization with other organizations, subject to approval by the assembly.

5.1.1.3 Audits

The 'Controller-General' shall head the audit division**.** He shall report directly to the assembly. The main function of the audit division is to audit the Fund to make sure that it is used as stipulated in the GOGMEPO MOP Act.

5.1.1.4 The Legal Division

The 'Director of Legal Affairs' shall head the legal division. Under this proposition, the legal division runs two courts, namely: the court of first instance and the court of appeals. These courts have exclusive original jurisdiction over controversies arising under the GOGMEPO MOP Act. It also runs a separate legal affairs department that

deals with legal issues like drafting, among others. The legal division shall pursue the polluters to recover money spent by the Fund in an event of an oil spill.

5.1.1.5 The Coast Guard (CG)

A 'Director' shall head the coastguard. It shall be the main coordination and execution centre in event of an oil spill in the region. It shall develop and publish a contingency plan for the whole GOG region. It shall be equipped and ready to combat oil pollution at any time and shall run on a 24 hours basis.

5.1.1.6 The Technical Division

A 'Technical Director' shall head this division. It shall deal with technical issues. This division shall also run the department of research and development. In collaboration with the CG, the entire GOG region shall be mapped out in the contingency plan with data from the research department.

5.1.1.7 The Fund

A 'Financial Director' shall head the Fund. The Fund shall be the main source of finance for the organization. Resources shall be allocated from the Fund in urgent needs during an oil disaster. All payments of member states' contributions, oil exploiters' contributions, donors' contributions and others shall be done directly to the Fund.

5.2 Marine Oil Pollution Act for 'The Gulf of Guinea Marine Environmental Protection Organization, (GOGMEPO)'

THE FIRST GENERAL ASSEMBLY OF THE GULF OF GUINEA MARINE ENVIRONMENTAL PROTECTION ORGANIZATION (GOGMEPO)

AT THE FIRST SESSION

Begun and held at the city of Lagos, Nigeria on the: *day, month, year*

AN ACT

This Act is intended to establish the limitations on liability for damage resulting from oil pollution, to establish a Fund for the payment of compensation for such damage, and for other purposes.

Enacted by a house of representatives of all the Gulf of Guinea states in Assembly.

This Act may be cited as the '**GOGMEPO Oil Pollution Act of *Year'***

5.2.1 *ARTICLE 1*: **DEFINITIONS**

For the purposes of this Act, the term,

(1) "Act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character the effects of which could not have been prevented or avoided by the exercise of due care or foresight;

(2) "Claim" means a request, made in writing for a certain sum, for compensation for damages or removal costs resulting from an incident;

(3) "Claimant" means any person or government who presents a claim for compensation under this title;

(4) "Damages" means damages specified in article 2 (b) of this Act, and includes the cost of assessing these damages;

(5) "Discharge" means any emission, intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping;
(6) "Facility" means any structure, group of structures, equipment, or device which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes;
(7) "Fund" means the GOGMEPO oil spill liability trust Fund;
(8) "Guarantor" means any person, other than the responsible party, who provides evidence of financial responsibility for a responsible party under this Act;
(9) "Incident" means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil;
(10) "Gulf of Guinea states" means the several states of the Gulf of Guinea and any other territory or possession of the Gulf of Guinea;
(11) "Liability" means the same as in CLC convention;
(12) "Mobile offshore drilling unit" means a vessel capable of use as an offshore facility;
(13) "National Contingency Plan" means the national contingency plan prepared and published under the national law of a Gulf of Guinea state;
(14) "GOGMEPO Contingency Plan " means the contingency plan prepared and published by the Gulf of Guinea Marine Environmental Protection Organization Coast Guard (GOGMEPO-CG);
(15) "Natural resources" includes land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by GOGMEPO or any Gulf of Guinea state;
(16) "Navigable waters" means the waters of the Gulf of Guinea, including the territorial sea of any Gulf of Guinea state;
(17) "Offshore facility" means any facility of any kind located in, on, or under any of the navigable waters of the Gulf of Guinea, and any facility of any kind which is

subject to the jurisdiction of any state in the Gulf of Guinea;

(18) "Oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

(19) "Onshore facility" means any facility of any kind located in, on, or under, any land within the Gulf of Guinea other than submerged land;

(20) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel, and (ii) in the case of an onshore facility, and an offshore facility, any person owning or operating such onshore facility or offshore facility, and (iii) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;

(21) "Public vessel" means a vessel owned or bareboat chartered and operated by GOGMEPO, any Gulf of Guinea state, or by a foreign nation, except when the vessel is engaged in commerce;

(22) "Removal" means containment and removal of oil or a hazardous substance from the Gulf of Guinea waters and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches;

(23) "Removal costs" means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident;

(24) "Responsible party" means the following: (i) in the case of a vessel, any person owning, operating, or demise chartering the vessel (ii) in the case of an onshore facility (other than a pipeline), any person owning or operating the facility (iii) in the case of an offshore facility (other than a pipeline) the holder of a right of use and easement granted under this Act (iv) in the case of a pipeline, any person owning or operating the pipeline (v) in the case of an abandoned vessel, onshore facility, pipeline, or offshore facility, the persons who would have been responsible parties immediately prior to the abandonment of the vessel or facility;

(25) "Director" means the director of the department in which the coastguard is operating;
(26) "Tank vessel" means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that (i) is a vessel of a Gulf of Guinea state (ii) operates on the navigable waters of the Gulf of Guinea (iii) transfers oil or hazardous material in a place subject to the jurisdiction of a Gulf of Guinea state;
(27) "Territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters of any Gulf of Guinea state, and extending seaward a distance of 12 nautical miles;
(28) "Vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, other than a public vessel including barges;
(29) "Organization" means The Gulf of Guinea Marine Environmental Protection Organization (GOGMEPO);
(30) "Secretary " means the secretary-general of the organization.

5.2.2 *ARTICLE 2*: ELEMENTS OF LIABILITY

(a) Notwithstanding any other provision or rule of national law of a Gulf of Guinea state, and subject to the provisions of this Act, each responsible party for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters of the Gulf of Guinea or adjoining shorelines or the exclusive economic zone of a Gulf of Guinea state is liable for the removal costs and damages specified in article 2 (b) that result from such incident.

(b) Covered removal costs and damages:-
(1) Removal costs: The removal costs referred to in article 2 (a) are: (A) all removal costs incurred by GOGMEPO coastguard (GOGMEPO-CG), two or more Gulf of Guinea states or a Gulf of Guinea state, and (B) any removal costs incurred by any

person for acts taken by the person, which is consistent with the GOGMEPO contingency plan or a national contingency plan.

(2) Damages: The damages referred to in article 2 (a) are the following; (A) damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage, which shall be recoverable by the GOGMEPO-CG, or a Gulf of Guinea state government; (B) damages for injury to, or economic losses resulting from destruction of, real or personal property, which shall be recoverable by a claimant who owns or leases that property; (C) damages for loss of subsistence use of natural resources, which shall be recoverable by any claimant who so uses natural resources which have been injured, destroyed, or lost, without regard to the ownership or management of the resources; (D) damages equal to the net loss of taxes, royalties, rents, fees, or net profit shares due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by the GOGMEPO-CG or a Gulf of Guinea state government; (E) damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant; (F) damages for net costs of providing increased or additional public services during or after removal activities, including protection from fire, safety, or health hazards, caused by a discharge of oil, which shall be recoverable by the GOGMEPO-CG or a Gulf of Guinea state government.

(c) Liability of third parties:-

(**1),** (A) a third party is treated as responsible party except as provided in article 2 (b) (2) (B), in any case in which a responsible party establishes that a discharge or threat of a discharge and the resulting removal costs and damages were caused solely by an act or omission of one or more third parties described in article 3 (a) (3), the third party or parties shall be treated as the responsible party or parties for purposes of determining liability under this title; (B) if the responsible party alleges that the discharge or threat of a discharge was caused solely by an act or omission of a third party, the responsible party, (i) shall pay removal costs and damage to any claimant; and (ii) shall be entitled by subrogation to all rights of the GOGMEPO-CG and/or governments of Gulf of Guinea states and the claimant to recover removal costs or

damages from the third party or the Fund.

(2) Limitation applied: (A) if the act or omission of a third party that causes an incident occurs in connection with a vessel or a facility owned or operated by the third party, the liability of the third party shall be subject to the limits provided in article 4 of this Act as applied with respect to the vessel or facility; (B) in any other case, the liability of a third party or parties shall not exceed the limitation which would have been applicable to the responsible party of the vessel or facility from which the discharge actually occurred if the responsible party were liable.

5.2.3 *ARTICLE 3*: **DEFENSES TO LIABILITY**

(a) Complete defenses: A responsible party is not liable for removal costs or damages under article 2 if the responsible party establishes, by a preponderance of the evidence, that the discharge or substantial threat of a discharge of oil and the resulting damages or removal costs were caused solely by,

(1) an act of God;

(2) an act of war;

(3) an act or omission of a third party other than an employee or agent of the responsible party or a third party whose act or omission occurs in connection with any contractual relationship with the responsible party, if the responsible party establishes, by a preponderance of the evidence, that the responsible party- (A) exercised due care with respect to the oil concerned, taking into consideration the characteristics of the oil and in light of all relevant facts and circumstances, and (B) took precautions against foreseeable acts or omissions of any such third party and the foreseeable consequences of those acts or omissions; or

(4) any combination of paragraphs (1), (2), and (3).

(b) Defenses as to particular claimants: A responsible party is not liable under article 2 to a claimant, to the extent that the incident is caused by gross negligence or willful misconduct of the claimant.

(c) Limitation on complete defense: Article 3 (a) does not apply with respect to a responsible party who fails or refuses;

(1) to report the incident as required by law (either national law or this Act) if the responsible party knows or has reason to know of the incident;
(2) to provide all reasonable cooperation and assistance requested by a responsible official (of GOGMEPO-CG or Gulf of Guinea state government) in connection with removal activities.

5.2.4 *ARTICLE 4*: **LIMITS ON LIABILITY**

(a) Except as otherwise provided in this article, the total of the liability of a responsible party under article 2 and any removal costs incurred by, or on behalf of, the responsible party, with respect to each incident shall not exceed,
(1) for a tank vessel, the greater of,
(A) 860 SDR ($1,200)[1] per gross ton; or
(B) (i) in the case of a vessel greater than 3,000 gross tons, 7,200,000 SDR or
(ii) in the case of a vessel of 3,000 gross tons or less, 1,500,000 SDR;
(2) for any other vessel, 500 SDR per gross ton or 360,000 SDR, whichever is greater;
(3) for an offshore facility, the total of all removal costs plus 53,600,000 SDR; and
(4) for any onshore facility and a deepwater port 250,000,000.0 SDR
(b) Division of liability for mobile offshore drilling units:-
(1) Treated first as tank vessel: For purposes of determining the responsible party and applying this Act and except as provided in article 4 (a) (2), a mobile offshore drilling unit which is being used as an offshore facility is deemed to be a tank vessel with respect to the discharge, or the substantial threat of a discharge of oil on or above the surface of the water.
(2) Treated as facility or excess liability: To the extent that removal costs and damages from any incident described in article 4 (b) (1) exceed the amount for which a responsible party is liable (as that amount may be limited under article 4 (a) (1)), the mobile offshore drilling unit is deemed to be an offshore facility. For purposes of

[1] *Conversion of currencies has been made on the basis of the rates at 31st December 2002,(i.e. 1 SDR = 1.4 USD*)

applying article 4 (a) (3), the amount specified in that article shall be reduced by the amount for which the responsible party is liable under article 4 (a) (1).

(c) Exceptions:-

(1) Acts of responsible party: Article 4 (a) does not apply if the incident was proximately caused by, (A) gross negligence or willful misconduct of, or (B) the violation of an applicable safety, construction, or operating regulation by, the responsible party, an agent or employee of the responsible party, or a person acting pursuant to a contractual relationship with the responsible party

(2) Failure or refusal of responsible party: Article 4 (a) does not apply if the responsible party fails or refuses; (A) to report the incident as required by law and the responsible party knows or has reason to know of the incident; (B) to provide all reasonable cooperation and assistance requested by a responsible official in connection with removal activities;

(3) Outer continental shelf facility or vessel: Notwithstanding the limitations established under article 4 (a) and the defenses of article 3, all removal costs incurred by the GOGMEPO-CG or Gulf of Guinea states government or any local official or agency in connection with a discharge or substantial threat of discharge of oil from any outer continental shelf facility or a vessel carrying oil as cargo or as fuel (bunkers) from such a facility shall be borne by the owner or operator of such facility or vessel.

(d) Adjusting limits of liability:-

(1) Onshore facilities: Subject to article 4 (d) (2), the secretary may establish by regulation, with respect to any class or category of onshore facility, a limit of liability under this article of less than 250,000,000.0 SDR, but not less than 5,800,000 SDR, taking into account size, storage capacity, oil throughput, proximity to sensitive areas, type of oil handled, history of discharges, and other factors relevant to risks posed by the class or category of facility.

(2) Deepwater ports and associated vessels: (A) the director (in collaboration with the head of technical division) shall conduct a study of the relative operational and environmental risks posed by the transportation of oil by vessel to all the deepwater ports in the Gulf of Guinea versus the transportation of oil by vessel to other ports.

The study shall include a review and analysis of offshore lightering practices used in connection with that transportation, an analysis of the volume of oil transported by vessel using those practices, and an analysis of the frequency and volume of oil discharges that occur in connection with the use of those practices; (B) not later than one year after the date of the enactment of this Act, the secretary shall submit to the GOGMEPO general-assembly, a report on the results of the study conducted under article 4 (d) (2) (A); (C) if the secretary determines, based on the results of the study conducted under article 4 (d) (2) (A) that the use of deepwater ports in connection with the transportation of oil by vessel results in a lower operational or environmental risk than the use of other ports, the secretary shall initiate, not later than the 180th day following the date of submission of the report to the general-assembly under article 4 (d) (2) (B), a rulemaking proceeding to lower the limits of liability under this article for deepwater ports as the secretary determines appropriate. The secretary may establish a limit of liability of less than 250,000,000.0 SDR, but not less than 35,800,000 SDR, in accordance with article 4 (1).

(3) Periodic reports: The secretary shall, within one year after the date of the enactment of this Act, and from time to time thereafter, report to the assembly on the desirability of adjusting the limits of liability specified in article 4 (a).

5.2.5 *ARTICLE 5*: NATURAL RESOURCES

(a) Liability:- In the case of natural resource damages under article 2 (b) (2) (A), liability shall be:

(1) to the Gulf of Guinea states governments for natural resources belonging to, managed by, controlled by, or appertaining to those Gulf of Guinea states;

(2) to any Gulf of Guinea state for natural resources belonging to, managed by, controlled by, or appertaining to such state;

(b) Designation of trustees:-

(1) The authorized representative of any Gulf of Guinea state, or foreign government, shall act on behalf of the public, or foreign country as trustee of natural resources to present a claim for and to recover damages to the natural resources;

(2) GOGMEPO-Trustees: The secretary shall designate officials who shall act on behalf of the public as trustees for natural resources under this Act;

(3) Gulf of Guinea States Trustees: The governments of each Gulf of Guinea state shall designate officials who may act on behalf of such governments as trustees for natural resources under this Act and shall notify the secretary of the designation;

(4) Foreign Trustees: The government of any foreign country may designate the trustee who shall act on behalf of that government as trustee for natural resources under this Act.

(c) Functions of trustees:-

(1) GOGMEPO-Trustees: The GOGMEPO officials designated under article 5 (b)(2),

(A) shall assess natural resource damages under article 2 (b) (2) (A) for the natural resources under their trusteeship; (B) may, upon request of and reimbursement from GOGMEPO or a Gulf of Guinea state, assess damages for the natural resources under GOGMEPO or that state's trusteeship; and (C) shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship.

(2) Gulf of Guinea States Trustees: The state and local officials designated under article 5 (b) (3), (A) shall assess natural resource damages under article 2 (b) (2) (A) for the purposes of this Act for the natural resources under their trusteeship; and (B) shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship.

(3) Foreign trustees: The trustee designated under article 5 (b)(4), (A) shall assess natural resource damages under article 2 (b) (2) (A) for the purposes of this Act for the natural resources under their trusteeship; and (B) shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship.

(4) Notice and opportunity to be heard: Plans shall be developed and implemented under this article only after adequate public notice, opportunity for a hearing, and consideration of all public comment.

(d) Measure of damages:-

(1) The measure of natural resource damages under article 2 (b) (2) (A) is,
(A) the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of, the damaged natural resources; (B) the diminution in value of those natural resources pending restoration; plus (C) the reasonable cost of assessing those damages.

(2) Determine costs with respect to plans: Costs shall be determined under article 5 (d) (1) with respect to plans adopted under article 5 (c).

(3) No double recovery: There shall be no double recovery under this Act for natural resource damages, including with respect to the costs of damage assessment or restoration, rehabilitation, replacement, or acquisition for the same incident and natural resource.

(e) Damage assessment regulations:-

(1) Regulations: The secretary, acting through the various related Gulf of Guinea states governmental agencies with respect to commerce for ocean and atmosphere, environmental protection agencies, the ministries of fish and wildlife services, and the heads of other affected agencies, not later than one years after the date of the enactment of this Act, shall promulgate regulations for the assessment of natural resource damages under article 2 (b) (2) (A) resulting from a discharge of oil for the purpose of this Act.

(f) Use of recovered sums: Sums recovered under this Act by GOGMEPO or a Gulf of Guinea state government, or foreign trustee for natural resource damages under article 2 (b) (2) (A) shall be retained by the trustee for use only to reimburse or pay costs incurred by the trustee under article 5 (c) with respect to the damaged natural resources. Any amounts in excess of those required for these reimbursements and costs shall be deposited in the Fund.

(g) Compliance: Review of actions by any GOGMEPO official where there is alleged to be a failure of that official to perform a duty under this article that is not discretionary with that official may be heard in the GOGMEPO court of first instant or a district court in a Gulf of Guinea state in which the person resides or in which the alleged damage to natural resources occurred. The court may award costs of litigation to any prevailing or substantially prevailing party. Nothing in this article shall restrict any right that any person may have to seek relief under any other

provision of law.

5.2.6 *ARTICLE 6:* CONSULTATION ON REMOVAL ACTIONS

The secretary shall consult with the affected trustees designated under this article on the appropriate removal action to be taken in connection with any discharge of oil. For the purposes of the GOFMEPO contingency plan, removal with respect to any discharge shall be considered completed when so determined by the secretary in consultation with the government or governments of the affected Gulf of Guinea states. However, this determination shall not preclude additional removal actions under applicable national law of the affected state.

5.2.7 *ARTICLE 7*: SOURCES OF THE FUND

(a) Mandatory annual financial contributions:-

(1) Each Gulf of Guinea state government, be it coastal or landlocked, which has special interest and/or benefits from the natural resources or maritime transport in the GOG coastal waters shall pay a mandatory annual financial contribution to the Fund.
(2) Any person exploiting or producing oil or gas in the relevant calendar year in excess of 5.000 tons of crude oil or heavy fuel oil or gas in any form, in any installation (onshore facility, offshore facility, pipeline, oil refinery or any other facility) in any Gulf of Guinea state shall pay a mandatory annual financial contribution to the Fund, (A) the levy of contributions shall be based on reports on oil (or gas) exploitation or production in respect of individual contributors which shall be submitted to the secretary by the government of the Gulf of Guinea state in which the exploitation takes place, (B) contributions shall be paid by the individual contributors directly to the Fund, (C) governments shall not be responsible for these payments unless they have voluntarily accepted such responsibility.

(b) Assistance from international organizations:-

(1) The secretary shall lobby for assistance from international organizations: (A) the United Nations Organization; (B) International Maritime Organization; (C) the Food and Agriculture Organization; (D) United Nations Environmental Programme; (E) the Africa Development Bank; (F) any other agency deemed necessary by the secretary.

(2) All contributions shall be paid directly to the Fund

(c) Regular dues by ships trading in the Gulf of Guinea states:

(1) All ships on international voyages trading in the Gulf of Guinea states shall pay a regular contribution to the Fund for every trip that they make to any port under the jurisdiction of a Gulf of Guinea state. This fee will be decided by GOGMEPO in consultation with the GOG state governments.

5.2.8 *ARTICLE 8*: **USES OF THE FUND**

(a) General Uses: The Fund shall be available to the secretary for,

(1) the payment of removal costs, including the costs of monitoring removal actions, determined by the secretary to be consistent with the GOGMEPO contingency plan or national contingency plan, (A) by GOGMEPO authorities; or (B) by a Gulf of Guinea state government or designated state official under article 8 (d);

(2) the payment of costs incurred by GOGMEPO or Gulf of Guinea states trustees in carrying out their functions under article 6 for assessing natural resource damages and for developing and implementing plans for the restoration, rehabilitation, replacement, or acquisition of the equivalent of damaged resources determined by the secretary to be consistent with the GOGMEPO contingency plan;

(3) the payment of removal costs determined by the secretary to be consistent with the GOGMEPO contingency plan as a result of, and damages resulting from, a discharge, or a substantial threat of a discharge, of oil from a foreign offshore unit;

(4) the payment of claims in accordance with article 9 for uncompensated removal costs determined by the secretary to be consistent with the GOGMEPO contingency plan or uncompensated damages;

(5) the payment of GOGMEPO administrative, operational, and personnel costs and expenses reasonably necessary for and incidental to the implementation, administration, and enforcement of this Act, with respect to prevention, removal, and enforcement related to oil discharges, provided that, (A) not more than $25,000,000 in each fiscal year shall be available to the secretary for operating expenses incurred by the GOGMEPO-CG; (B) not more than $30,000,000 each year shall be used for the purchase and prepositioning of oil spill removal equipment;

(b) Defense to liability for Fund: The Fund shall not be available to pay any claim for removal costs or damages to a particular claimant, to the extent that the incident, removal costs, or damages are caused by the gross negligence or willful misconduct of that claimant.

(c) Obligation of Fund by GOGMEPO officials: The secretary may promulgate regulations designating one or more GOGMEPO officials who may obligate money in accordance with article 8 (a).

(d) Access to Fund by state officials:-

(1) Immediate removal: In accordance with regulations promulgated under this article, the secretary, upon the request of the government of a state or pursuant to an agreement with a state under article 8 (d) (2), may obligate the Fund for payment in an amount not to exceed $250,000 for removal costs consistent with the GOGMEPO contingency plan required for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of a discharge of oil.

(2) Agreements: (A) the secretary shall enter into an agreement with the government of any interested Gulf of Guinea state to establish procedures under which the government or a designated state official may receive payments from the Fund for removal costs pursuant to article 8 (a) (1); (B) Agreements under article 8 (d) (2), (i) may include such terms and conditions as may be agreed upon by the secretary and the government of a state; and (ii) may authorize advance payments from the Fund to facilitate removal efforts.

(e) Regulations: The secretary shall,

(1) not later than one year after the date of the enactment of this Act, publish proposed regulations detailing the manner in which the authority to obligate the Fund

and to enter into agreements under article 8 (e) (1) shall be exercised; and

(2) not later than six months after the close of the comment period for such proposed regulations, promulgate final regulations for that purpose.

(f) Rights of subrogation: Payment of any claim or obligation by the Fund under this Act shall be subject to the administration of GOGMEPO headed by the secretary acquiring by subrogation all rights of the claimant or state to recover from the responsible party.

(g) Audits: The controller-general shall audit all payments, obligations, reimbursements, and other uses of the Fund, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The controller-general shall submit to the GOGMEPO general assembly an interim report one year after the date of the enactment of this Act. The controller-general shall thereafter audit the Fund as is appropriate. Each division shall cooperate with the controller-general in carrying out article 8 (g)

(h) Period of limitations for claims:-

(1) Removal costs: No claim may be presented under this title for recovery of removal costs for an incident unless the claim is presented within six years after the date of completion of all removal actions for that incident.

(2) Damages: No claim may be presented under this article for recovery of damages unless the claim is presented within three years after the date on which the injury and its connection with the discharge in question were reasonably discoverable with the exercise of due care, or in the case of natural resource damages under article 2 (b) (2) (A), if later, the date of completion of the natural resources damage assessment under article 6.

(i) Limitation on payment for same costs: In any case in which the secretary has paid an amount from the Fund for any removal costs or damages specified under article 8 (a), no other claim may be paid from the Fund for the same removal costs or damages.

(j) Obligation in accordance with Plan:-

(1) Except as provided in article 8 (j) (2), amounts may be obligated from the Fund for the restoration, rehabilitation, replacement, or acquisition of natural resources

only in accordance with article 6.

(2) Exception; article 8 (j) (1) shall not apply in a situation requiring action to avoid irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action.

(k) Preference for private persons in area affected by discharges:

(1) In the expenditure of GOGMEPO Funds for removal of oil, including for distribution of supplies, construction, and other reasonable and appropriate activities, under a contract or agreement with a private person, preference shall be given, to the extent feasible and practicable, to private persons residing or doing business primarily in the area affected by the discharge of oil.

(2) Limitation; Article 8 (k) shall not be considered to restrict the use of the GOGMEPO-CG resources.

5.2.9 *ARTICLE 9***: CLAIMS PROCEDURE**

(a) Presentation: Except as provided in article 9 (b), all claims for removal costs or damages shall be presented first to the responsible party or guarantor of the source designated under article 10 (a).

(b) Presentation to Fund:-

(1) Claims for removal costs or damages may be presented first to the Fund,

(A) if the secretary has advertised or otherwise notified claimants in accordance with article 10 (c); (B) by the government of a Gulf of Guinea state for removal costs incurred by that state; or (C) by a GOGMEPO claimant in a case where a foreign offshore unit has discharged oil causing damage for which the Fund is liable under article 8 (a).

(2) Limitation on presenting claim; No claim of a person against the Fund may be approved or certified during the pendency of an action by the person in court to recover costs which are the subject of the claim.

(c) Election: If a claim is presented in accordance with article 9 (a) and,

(1) each person to whom the claim is presented denies all liability for the claim, or

(2) the claim is not settled by any person by payment within 90 days after the date

upon which, (A) the claim was presented, or (B) advertising was begun pursuant to article 10 (b), whichever is later, the claimant may elect to commence an action in the GOGMEPO court of first instance against the responsible party or guarantor or to present the claim to the Fund.

(d) Uncompensated damages: If a claim is presented in accordance with this article and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund.

(e) Procedure for claims against Fund: The secretary shall promulgate, and may from time to time amend, regulations for the presentation, filing, processing, settlement, and adjudication of claims under this Act against the Fund.

5.2.10 *ARTICLE 10*: **DESIGNATION OF SOURCE AND ADVERTISEMENT**

(a) Designation of source and notification: When the secretary receives information of an incident, the secretary shall, where possible and appropriate, designate the source or sources of the discharge or threat. If a designated source is a vessel or a facility, the secretary shall immediately notify the responsible party and the guarantor, if known, of that designation.

(b) Advertisement by responsible party or guarantor: If a responsible party or guarantor fails to inform the secretary, within 5 days after receiving notification of a designation under article 10 (a), or the party's or the guarantor's denial of the designation, such party or guarantor shall advertise the designation and the procedures by which claims may be presented, in accordance with regulations promulgated by the secretary. Advertisement under the preceding sentence shall begin no later than 15 days after the date of the designation made under article 10 (a). If advertisement is not otherwise made in accordance with article 10 (b), the secretary shall promptly and at the expense of the responsible party or the guarantor involved, advertise the designation and the procedures by which claims may be presented to the responsible party or guarantor. Advertisement under article 10 (b) shall continue for a period of no less than 45 days.

(c) Advertisement by the Secretary:- If,

(1) the responsible party and the guarantor both deny a designation within 5 days after receiving notification of a designation under article 10 (a),
(2) the source of the discharge or threat was a public vessel, or
(3) the secretary is unable to designate the source or sources of the discharge or threat under article 10 (a), the secretary shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the Fund.

5.2.11 *ARTICLE 11*: **SUBROGATION**

(a) Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for removal costs or damages shall be subrogated to all rights, claims, and causes of action that the claimant has under any other law.
(b) Actions on behalf of Fund: At the request of the secretary, the head of legal division of GOGMEPO shall commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to this Act, and all costs incurred by the Fund by reason of the claim, including interest (including prejudgment interest), administrative and adjudicative costs, and head of legal division 's fees. Such an action may be commenced against any responsible party or guarantor, or against any other person who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the cost or damages for which the compensation was paid. Such an action shall be commenced against the responsible foreign government or other responsible party to recover any removal costs or damages paid from the Fund as the result of the discharge, or substantial threat of discharge, of oil from a foreign offshore unit.

5.2.12 *ARTICLE 12*: **FINANCIAL RESPONSIBILITY**

(a) Requirement: The responsible party for,
(1) any vessel over 300 gross tons (except a non-self-propelled vessel that does not carry oil as cargo or fuel) using any place subject to the jurisdiction of the Gulf of Guinea (or a Gulf of Guinea state); or

(2) any vessel using the waters of the exclusive economic zone of a Gulf of Guinea state to transship or lighter oil, to or from a place subject to the jurisdiction of a Gulf of Guinea state; shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility sufficient to meet the maximum amount of liability to which, in the case of a tank vessel, the responsible party could be subject under article 4 (a) (1) or (d) of this Act, or to which, in the case of any other vessel, the responsible party could be subjected under article 4 (a) (2) or (d), in a case where the responsible party would be entitled to limit liability under that article. If the responsible party owns or operates more than one vessel, evidence of financial responsibility need be established only to meet the amount of the maximum liability applicable to the vessel in his fleet having the greatest maximum liability.

(b) Sanctions:-

(1) Withholding clearance: The secretary in collaboration with any Gulf of Guinea state government shall withhold or revoke the clearance for entrance of any vessel subject to article 12 that does not have the evidence of financial responsibility required for the vessel under this article.

(2) Denying entry to or detaining vessels: The secretary may request the government of a Gulf of Guinea state to, (A) deny entry to any vessel to any place in the jurisdiction of a Gulf of Guinea state, or to the navigable waters of the Gulf of Guinea, or (B) detain at the place, any vessel that, upon request, does not produce the evidence of financial responsibility required for the vessel under this article.

(3) Seizure of vessel: Any vessel subject to the requirements of this article, which is found in the navigable waters of any Gulf of Guinea state without the necessary evidence of financial responsibility for the vessel, shall be subject to seizure by and forfeiture to GOGMEPO in collaboration with the government of the Gulf of Guinea state in question.

(c) Offshore facilities:

(1) Except as provided in article 12 (c) (2), each responsible party with respect to an offshore facility shall establish and maintain evidence of financial responsibility of $150,000,000 to meet the amount of liability to which the responsible party could be

subjected under article 4 (a) in a case in which the responsible party would be entitled to limit liability under that article. In a case in which a person is the responsible party for more than one facility subject to article 12 (c) (1), evidence of financial responsibility need to be established only to meet the maximum liability applicable to the facility having the greatest maximum liability.

(2) Deepwater ports: Each responsible party with respect to a deepwater port shall establish and maintain evidence of financial responsibility sufficient to meet the maximum amount of liability to which the responsible party could be subjected under article 4 (a) of this Act in a case where the responsible party would be entitled to limit liability under that article. If the secretary exercises the authority under article 4(d) (2) to lower the limit of liability for deepwater ports, the responsible party shall establish and maintain evidence of financial responsibility sufficient to meet the maximum amount of liability so established. In a case in which a person is the responsible party for more than one deepwater port, evidence of financial responsibility need be established only to meet the maximum liability applicable to the deepwater port having the greatest maximum liability.

(d) Methods of financial responsibility: Financial responsibility under this article may be established by any one, or by any combination, of the following methods which the secretary determines to be acceptable: evidence of insurance, surety bond, guarantee, letter of credit, qualification as a self-insurer, or other evidence of financial responsibility. A bonding company authorized to do business in any Gulf of Guinea state for which the person is interested shall issue any bond filed. In promulgating requirements under this article, the Secretary may specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable, in establishing evidence of financial responsibility to effectuate the purposes of this Act.

(e) Claims against guarantor: Any claim for which liability may be established under article 2 may be asserted directly against any guarantor providing evidence of financial responsibility for a responsible party liable under that article for removal costs and damages to which the claim pertains. In defending against such a claim, the guarantor may invoke:

(1) all rights and defenses which would be available to the responsible party under this Act,

(2) any defense authorized under article 12 (e), and

(3) the defense that the incident was caused by the willful misconduct of the responsible party. The guarantor may not invoke any other defense that might be available in proceedings brought by the responsible party against the guarantor.

(g) Limitation on guarantor's liability: Nothing in this Act shall impose liability with respect to an incident on any guarantor for damages or removal costs which exceed, in the aggregate, the amount of financial responsibility required under this Act which that guarantor has provided for a responsible party.

(h) Continuation of regulations: Any regulation relating to financial responsibility, which has been issued pursuant to any provision of law repealed or superseded by this Act, and which is in effect on the date immediately preceding the effective date of this Act, is deemed and shall be construed to be a regulation issued pursuant to this article. Such a regulation shall remain in full force and effect unless and until superseded by a new regulation issued under this article.

(i) Unified certificate: The secretary may issue a single unified certificate of financial responsibility for purposes of this Act and any other law.

5.2.13 *ARTICLE 13*: **LITIGATION, JURISDICTION, AND VENUE**

(a) Review of regulations: Review of any regulation promulgated under this Act may be heard upon application by any interested person only in the court of appeals at the GOGMEPO headquarters in Lagos, Nigeria. Any such application shall be made within 90 days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this article 13 (a) shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.

(b) Jurisdiction: Except as provided in article 13 (a) and (c), the GOGMEPO court of first instance (or any Gulf of Guinea state district court) shall have exclusive original jurisdiction over all controversies arising under this Act, without regard to

the citizenship of the parties or the amount in controversy. Venue shall lie in the GOGMEPO Headquarters in Lagos, Nigeria or as appropriate and agreed between the GOGMEPO authorities and the government of any Gulf of Guinea state, in any district of a Gulf of Guinea state in which the discharge or injury or damages occurred, or in which the defendant resides, may be found, has its principal office, or has appointed an agent for service of process. For the purposes of this article, the Fund shall reside in the GOGMEPO headquarters in Lagos, Nigeria.

(c) Gulf of Guinea state court jurisdiction: A Gulf of Guinea state trial court of competent jurisdiction over claims for removal costs or damages, as defined under this Act, may consider claims under this Act or that state's national law and any final judgment of such court shall be recognized, valid, and enforceable for all purposes of this Act.

(d) Assessment and collection of tax: The provisions of article 13 (a), (b), and (c) shall not apply to any controversy or other matter resulting from the assessment or collection of any tax, or to the review of any regulation promulgated under the national law of a Gulf of Guinea state.

(e) Savings provision: Nothing in this title shall apply to any cause of action or right of recovery arising from any incident which occurred prior to the date of enactment of this Act. Such claims shall be adjudicated pursuant to the law applicable on the date of the incident.

(f) Period of limitations:-

(1) Damages: Except as provided in article 13 (f) (3) and (4), an action for damages under this Act shall be barred unless the action is brought within 3 years after, (A) the date on which the loss and the connection of the loss with the discharge in question are reasonably discoverable with the exercise of due care, or (B) in the case of natural resource damages under article 2 (b) (2) (A), the date of completion of the natural resources damage assessment under article 6.

(2) Removal costs: An action for recovery of removal costs referred to in article 2 (b) (1) must be commenced within three years after completion of the removal action. In any such action described in article 13 (f), the court shall enter a declaratory judgment on liability for removal costs or damages that will be binding

on any subsequent action or actions to recover further removal costs or damages. Except as otherwise provided in article 13 (f) (2), an action may be commenced under this title for recovery of removal costs at any time after such costs have been incurred.

(3) Contribution: No action for contribution for any removal costs or damages may be commenced more than three years after, (A) the date of judgment in any action under this Act for recovery of such costs or damages, or (B) the date of entry of a judicially approved settlement with respect to such costs or damages.

(4) Subrogation: No action based on rights subrogated pursuant to this Act by reason of payment of a claim may be commenced under this Act more than three years after the date of payment of such claim.

5.3 Implementation of the GOGMEPO Marine Oil Pollution Act

In implementing the GOGMEPO MOP ACT, the approach of IMO in developing regional regulations is highly recommended.

The IMO has not been able to take direct executive action on its conventions because of its international mandate. It has thus approached the issue of executing its conventions through the Technical Cooperation Programme where it has a strong mandate. To obtain the best results, the regional approach should go through three phases. This has proven to be successful and should be applied to the study area as shown below.

5.3.1 Analysis of existing legislation and documents

To begin with, a committee of implementation of the Act should be formed by the member states. In the first phase, the committee should analyse, in turn, those provisions of the national legislations of all the GOG states that have to do with MOP. This should be followed by a careful selection of suitable provisions that need be modified to suit the proposed MOP Act for the region vis-à-vis international law on this issue. The selected provisions should then be modified as appropriate. At this stage, the modified provisions and the proposed Act should both be sent out to all the GOG states for comments and feedback.

5.3.2 Fact finding missions

In the second phase, depending on the feedback from the states in question, fact-finding missions should be sent out to review and resolve any issues arising from these countries having some concerns in the initial documents that were sent out to them. After the amendments are done as appropriate, the documents should be returned to these governments for further feedback and comments.

5.3.3 Regional workshop and adoption

The final phase entails that a regional workshop for the representatives of all the GOG states is conducted. During this workshop, representatives of the beneficiary countries will discuss the entire Act with the amended provisions from their various national legislations on this issue and will come up with an agreed regional legal framework for MOP in the GOG.

CONCLUSION AND RECOMMENDATIONS

Conclusion

The legislations of some GOG countries on MOP show a number of positive features. First of all, it is undeniable that the governments of some Gulf of Guinea states are fully aware of the problem and are determined to solve it at both national and regional levels. In several countries, such determination has already led to the establishment of administrative machinery to deal with MOP in a more rational manner. In general, the control of oil pollution always involves a very large number of ministerial departments whose activities have to be coordinated. This is a difficult problem regardless of the degree of a country's economic development, but it is even more difficult to solve in deve1oping countries such as those in the GOG. It is also encouraging to see that environmental protection programs have been fitted into the more general framework of economic planning in some countries. This trend has enabled the various ministerial departments concerned with oil pollution control to begin carrying out a common policy in the field.

But numerous obstacles have yet to be overcome. Most countries of the region have not yet been able to draft a comprehensive environment policy on MOP and their action in this field at present consists only of point-like operations by some sectoral ministries. This is the case with Cameroon for instance. Even on this scale sometimes-considerable gaps are to be found in some national laws. It would seem that better exchange of information in these fields could fill certain gaps. The regional legal framework would be particularly useful for this purpose.

Coordination raises two difficulties. On the one hand, some countries of the region have not yet set up the necessary inter-ministerial machinery and therefore would have to fill this gap. On the other hand, other countries have created particularly complex and ambitious coordinating structures that may prove too cumbersome in

practice. To be sure, it is desirable, in theory, that all the administrations concerned are represented in the coordinating agency (e.g GOGMEPO).

These difficulties in organizational activities are made more acute as there is a general shortage of administrative and technical personnel specialized in environmental matters in most of the GOG countries. The inadequacy of human resources is accompanied by a shortage of material resources for prevention and for repression. It is to address these issues that some recommendations have been made here.

Recommendations

It is clear that the threats posed by oil to the GOG marine environment are real and serious and that the present legal framework for MOP in the region is grossly inadequate. MOP has not been a priority for the governments of the GOG states and thus the ratification and implementation of major conventions dealing with MOP has proven to be difficult.

Besides, the agencies concerned are limited in their activities because the legal basis is inadequate. Such inadequacy is of two kinds: in some cases, there are drastic prohibitions of a general nature that are difficult to apply in practice; in other cases, the difficulty is due to a lack or insufficiency either of legal standards or technical standards for combating MOP. In this field, it is obviously desirable to avoid regional discrepancies in the application of international conventions on MOP. Hence, it is important that national measures for application be harmonized to some extent. Such harmonization would be an important element within an overall regional action program, especially as it concerns issues of MOPL, considering that pollution knows no borders. The absence of a major oil disaster in the region seems to have sent the governments asleep despite the serious involvement of the oil industry in the region, the frequent visits of large tankers to the GOG and the fact that this region constitutes

an important route for the transportation of oil from the middle east to western Europe and the USA.

The legislative process should not end with the simple ratification of international conventions on MOP, but such conventions should be adopted at national and later regional levels to suit the needs of the region. Legislation, no matter how carefully drafted, must be used wisely by those who have been given the mandate to do so. GOGMEPO should be the structure to enforce its oil pollution Act and should therefore be given the resources to properly train personnel and provide them with the necessary equipment. For instance, the judges and attorneys to work for the GOGMEPO legal division and courts should have adequate training and experience in oil pollution issues.

It is thus, highly recommended that, all GOG states ratify the international conventions dealing with MOP and thereafter integrate the provisions of such conventions into their national laws for implementation. Only then can these countries participate in a regional structure such as GOGMEPO. The ratification of the Fund convention, among others, by all the GOG states is particularly indispensable as it provides the legal safeguard for these countries that enables them to benefit from the numerous advantages outlined in chapter three, should an oil spill actually occur.

Regional approach, the only way forward

As elaborated in the study, therefore, the regional approach seems to be the only way forward despite the challenges that it poses to countries of the region. All that is required of the GOG states now is for them to be aware of the potential danger that the region is exposed to and for their governments to be firmly committed to resolve the issue of MOP. Once these states are committed, the regional approach suggested in chapters four and five of this study could effectively be used to set up a precautionary structure to safeguard against MOP in the region.

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APPENDIX I

National Legislation listing for West and Central African Countries

National Legislation Listing

Information Key

01 Jurisdiction Zone	a 3 mile Territorial Sea b 12 mile Territorial Sea c Territorial Sea over 12 miles
02 Economic Zone	a 200 mile Exclusive Economic Zone b 200 mile Fishiries Zonle only c UN Law of the Sea Convention 1982
03 Special Zone	a Arquipelagic Waters b Acrtic Waters c Other
04 Polluting Damage Liability	a Strict b Almost Strict c Limited (CLC System)
05 Polluting Damage Liability	a Vessel/Master only b Vessel/Master/Owner/Operator/Charrter/Agent c Cargo
06 Polluting Substances	a Oil/Oil Mixtures only b Other Polluting Substances c Garbage /Refuse d Sewage
07 Sanctions	a Fine only b Fine and/or Imprisonment c Arrest/Delay of Vessel
08 Evidence of Financial Responsibility	a P&I-CLC Certificate b National Fund Contribution c Funds Deposited
09 Ratification/Accession	a OILPOL 1954 b MARPOL'73/78 c OPRC 1990
10 Ratification/Accession	a Civil Liability Convention 1969 (CLC) b Compensation Fund Convention 1971 (FUND) c CLC Protocol 1992 d FUND Protocol 1992
11 Ratification/Accesion	a Intervention Convention 1969/73 b Training Convention 1978 (STCW) c Salvage 1989
12 Ratification/Accesion	a Port State Inspection System Acceptance b Anti-Dumping Convention 1972

Note: Complete information is not available for all listed states. If no letters are listed on the numerical matrix then no information is available.

West and Central Africa

1. Benin

01	02	03	04	05	06
07	08	09	10ab	11ab	12

Legislation No information available.
Fine Not known.

2. Cameroon

01b	02ac	03	04c	05	06
07	08a	09	10ab	11ab	12b

Legislation No information available.
Fine Not known.

3. Cape Verde

01b	02ac	03	04	05	06
07	08	09	10	11b	12b

Legislation No information available.
Fine Not known.

4. Congo

01c	02a	03	04	05	06b
07bc	08	09	10	11	12

Legislation Act N° 30-63 on 4 July 1963, called the Merchant Marine Code; Act N° 003/91 from 23 April 1991 on Environment Protection; Ordonnance N° 22/70 from 23 April 1970 on Territorial Sea, Sea Water Pollution and Fisheries. The Congo has also included certain maritime conventions in national law for which no instruments have been deposited with the IMO: COLREG, MARPOL'73/78, LL66 and SOLAS'74.
Fine From 10,000 CFA Francs to 20,000,000 CFA Francs for pollution from ships.

5. Côte d'Ivoire

01b	02ac	03	04a	05	06
07	08a	09b	10ab	11ab	12b

Legislation No information available.
Fine Not known.

6. Gabon

01	02	03	04c	05	06
07	08a	09b	10ab	11ab	12b

Legislation No information available.
Fine Not known.

7. Gambia

01b	02ac	03	04c	05b	06abcd
07bc	08a	09b	10ab	11b	12

Legislation MARPOL'73/78; Ports Act 1972; Environmental (Dumping) Act 1989.
Fine Ports Act 1972: Maximum fine unlimited and minimum fine USD700. Environmental (Dumping) Act 1989: maximum fine USD 65,000 plus imprisonment.

8. Ghana

01b	02ac	03	04c	05b	06abcd
07b	08a	09b	10ab	11ab	12

Legislation Oil in Navigable Waters Act (Act 235) 1964;
Petroleum Exploration and Production Law (PNDCL 84) 1984. The Merchant Shipping Act (1963) and the Oil in Navigable Waters Act (1964) are being revised.
Fine Not known.

9. Guinea

01b	02ac	03	04	05	06
07	08	09b	10	11b	12

Legislation No information available.
Fine Not known.

10. Liberia

01	02	03	04c	05	06
07	08a	09abc	10abcd	11ab	12b

Legislation The Liberian Maritime Law and Liberian Maritime Regulations.
Fine Not known.

11. Mauritania

01b	02ac	03	04c	05	06
07	08a	09	10ab	11b	12

Legislation No information available.
Fine Not known.

12. Marrocco (not located in the GOG)

13. Nigeria

01b	02ac	03	04c	05b	06ab
07ac	08a	09c	10ab	11b	12b

Legislation No information available.
Fine Variable fines. Known examples: vessel had two spillages of crude oil estimated at less than 100 BBLS. The fine was USD50,000 for each offence and USD125,000 for the clean-up, although no cleaning was performed.

14. Senegal

01b	02ac	03	04c	05	06
07	08a	09	10a	11a	12

Legislation No information available.
Fine Not known.

15. Sierra Leone

01b	02ac	03	04c	05abc	06abcd
07bc	08	09b	10	11b	12

Legislation The Fisheries Management and Development Act 1988 (does not cover some aspects of marine pollution).
Fine Imposition of fines for contraventions of the provisions of the Fisheries Management and Development Act.

16. Togo

01b	02ac	03	04	05	06
07	08	09b	10	11b	12

Legislation No information available.
Fine Not known.

17. Zaire (renamed Democratic. Republic of the Congo in 1997)

01b	02ac	03	04	05	06
07	08	09	10	11b	12b

Legislation No information available.
Fine Not known.

Source: Edgar Gold. *Gard handbook on marine pollution* (2nd Ed.).

APPENDIX II

IMO STATUS OF CONVENTIONS 28/02/2003	MARPOL 73/78 (Annex I)	MARPOL 73/78 (Annex III)	MARPOL 73/78 (Annex IV)	MARPOL 73/78 (Annex V)	MARPOL Protocol 97 (Annex IV)	Intervention Conv. 69	Intervention Protocol 73	CLC 69
Angola	x	x	x	x		x		
Benin	x	x	x	x		x		x
Burkina Faso								
Cameroon						x		
Cape Verde								
Central African Republic								
Chad								
Congo								
Ivory Coast	x	x	x	x		x		x
Democratic Republic of Congo								
Equatorial Guinea	x	x	x	x		x		x
Gabon	x	x	x	x		x		x
Gambia	x	x	x	x				x
Ghana	x					x		x
Guinea	x	x	x	x				
Guinea - Bissau								
Liberia	x	x		x	x	x	x	
Mali								
Mauritania	x	x	x	x		x	x	x
Namibia	x	x	x	x				
Niger								
Nigeria	x	x	x	x				x
Sao Tome & Principe	x	x	x	x				x
Senegal	x	x	x	x		x		x
Sierra Leone	x	x	x	x				
Togo	x	x	x	x				