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## A study of national laws of Vietnam on compensation for ship-source oil pollution

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**WORLD MARITIME UNIVERSITY**

Malmö, Sweden

**A study of national laws of Vietnam on compensation  
for ship-source oil pollution**

By

**NGUYEN MAI THANH TRUC**

**Vietnam**

A dissertation submitted to the World Maritime University in partial  
fulfilment of the requirement for the award of the degree of

**MASTER OF SCIENCE**

**In**

**MARITIME AFFAIRS**

**(Maritime Law and Policy)**

2019

## 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): .....  .....

(Date): ..... 24/09/2019 .....

Supervised by:

**Associate Professor María Carolina Romero Lares**  
**World Maritime University**

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Besides, I would also like to thank the ITF Seafarer's Trust organization for their scholarship fund that supplied me with a valuable opportunity to study at World Maritime University. I want to thank my organization in Vietnam - Maritime Administration of HoChiMinh City for nominating me to apply for the M.Sc. program in Maritime Affairs - Maritime Law and Policy specialization.

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Next, I am very grateful to my colleagues/co-workers in Vietnam and the staff in World Maritime University for supporting and providing documents and experiences for me to complete the essay more smoothly. I want to thank my beloved friends who studied in the 2018 course and who are studying in the 2019 - 2020 school year for their kind help and encouragement.

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## Abstract

Oil pollution at sea has been an obstacle in recent years, especially in the maritime industry. In the current era of economic development and transportation, the increase in the demand for transport and exploitation of resources causes an increase in the risk of oil pollution to the sea. Marine environmental pollution due to oil seriously concerns not only the economy, marine environment, and ecosystems for affected states but also severely harms society. In response, the International Maritime Organization adopted the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (the 1992 FUND entered into force on 30 May 1996) and the International Convention on Civil Liability for Oil Pollution Damage (the 1992 CLC was adopted on 27 November 1992 and entry into force was on 30 May 1996). To minimize the consequences and environmental damage caused by oil pollution and keep the sustainable development of the international maritime industry, the 1992 CLC and 1992 FUND conventions set up a legal framework for civil liability concerning oil contamination as well as established a fund for recovering damages.

From the above comments, the legalization and completion of legal documents in Vietnam on compensation for damages and civil liability due to oil pollution in Vietnam are essential. Accordingly, the author has chosen a problem which is not too new but needs to be considered - “*A study of national laws of Vietnam on compensation for ship-source oil pollution*” to be the topic for the dissertation.

The analyses in this dissertation are based on the current laws of Vietnam and the available data and information in Vietnam, particularly, and in the maritime field in general to review Vietnamese laws on compensation for damage caused by oil pollution. Additionally, this paper also highlights the differences between Vietnamese laws and the provisions of the IOPC Fund Convention on compensation for damages caused by oil pollution from ships. Thereby, a consideration will be discussed for the joining of the 1992 FUND by Vietnam. At the same time, the dissertation will propose several recommendations to improve the current Vietnamese laws related to civil

liability and compensation for oil pollution damage following international practices and Vietnamese circumstances.

KEYWORDS : Compensation, ship-source oil pollution, oil pollution, Vietnam.

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## List of Abbreviations

ASEAN	The Association of South East Asian Nations
b/d	Barrels per day
BUNKER	International Convention on Civil Liability for Bunker Oil Pollution Damage
CLC	International Convention on Civil Liability for Oil Pollution Damage
DO	Diesel Oil
DWT	Deadweight tonnage
EEZ	Exclusive Economic Zone
EIA	Energy Information Administration
FO	Fuel Oil
FUND	International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage
GDP	Gross Domestic Product
GT	Gross Tonnage
HCMC	Ho Chi Minh City
IMF	The International Monetary Fund
IMO	International Maritime Organization
IOPC Funds	The International Oil Pollution Compensation Funds
ITOPF	The International Tanker Owners Pollution Federation Limited
Km	Kilometers
Km <sup>2</sup>	Square kilometer
LNG	Liquefied natural gas
M <sup>2</sup>	Square mile
M <sup>3</sup>	Cubic meter
Marpol	The international Convention for the Prevention of Pollution from Ships
Mg/l	Milligrams per liter
MMbbl/d	Million Barrels per day
SCS	South China Sea

SDR	Special drawing rights
STCW	The International Convention of Training Certification and Watchkeeping for Seafarers
SWOT	Strengths, Weaknesses, Opportunities, Threats
The UK	The United Kingdom
The UN	The United Nations
UNCLOS	The United Nations Convention on the Law of the Sea
UNESCO	the United Nations Educational Scientific and Cultural Organization
USD	United States dollar
Vinamarine	Vietnam Maritime Administration
VND	Vietnam Dong
VNU	Vietnam National University

## CHAPTER 1: INTRODUCTION, PROBLEM STATEMENT, AIM OF RESEARCH, RESEARCH QUESTIONS, IMPORTANCE OF INVESTIGATION, RESEARCH METHODOLOGY AND LIMITATIONS

### Chapter 1.1: Introduction

Before the twentieth century, countries all over the world just paid attention to the benefits that international trade brought to them, ignoring the sources of pollution from ships on the sea; until, the world witnessed the growth of seaborne trade worldwide along with the increase in size of vessels which are a potential threat to the marine environment. Namely, oil pollution resulting from the Torrey Canyon disaster in 1967 – the ship was registered in Liberia with a capacity of 12,300 tons which was one of the largest ships around the globe at that time and it carried 120,000 tons of crude oil then got stranded in the UK and caused a large oil spill (Smith, 1968). That was the direct reason for policy makers, legislators and the international community, in general, to see clearly the severity and urgency of the trouble of marine pollution. Specifically, seaweed is revealed globally as the main kind of transportation for oil which stands for roughly 60% (Clear Seas, 2019). Marine pollution causes serious losses in fishing, agriculture, fisheries and tourism. Additionally, overcoming the damage caused takes time and has a great financial cost. Regarding the restriction and cleaning of the marine environment and the calculation of damages, to claim compensation is tremendously tough.

Recognizing the serious impact of oil pollution, the International Maritime Organization (IMO) has adopted international conventions to set up a legal framework for compensation for oil pollution due to oil spills from ships: the 1969 International Convention on Civil Liability for Oil Pollution Damage 1969 (1969 CLC) and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1971 FUND). The 1969 CLC was amended in 1992 by two protocols and these revised conventions are called the 1992 Civil Liability Convention (1992 CLC) and the 1992 Convention of the Fund (1992 Fund). These conventions came into effect on May 30, 1996. The Supplementary Fund

Protocol was adopted in 2003 by the IMO and provides additional compensation for the damage caused by oil pollution in member States. Criteria to qualify for compensation from the Additional Fund is the same as it is in the 1992 FUND (IMO, 2019).

As a country with more than 3260 km of coastline and a sea area of about 1,000,000km<sup>2</sup>, with a favorable geographical position, Vietnam is considered a country with great potential to develop its marine economy such as maritime and tourism, services in the maritime sector, and oil and gas (Hoi & Giao, 2015). Vietnam also has a vital international maritime route with the amount of oil transported approximately 200 million tons per year. These characteristics are extremely favorable for economic development, integrating it with the global trend, but it leads to the downside which is the increase in the risk of marine pollution caused by oil spills. According to a report from Vietnam's Environment Administration, more than 100 oil spills have occurred since 1989 and have caused serious consequences. According to the survey illustrated in Figure 1 by the International Tanker Owner Pollution Federation Ltd (ITOPF), during the period of time from 2002 to 2006, Vietnam hit the peak in number of oil spills caused by tankers accounting for 37% coinciding with the average growth rate in port traffic (Susannah Musk, 2014).

According to the statistics of the ITOPF between 2005 and 2014 on 39 countries, Vietnam is one of top five countries with the largest number of oil spills (Susannah Musk, 2014). Following on that basis, statistics published by the Ministry of Natural Resources and Environment in 2010, there are about three oil spills per year on average, including both the source identification and origin of unknown sources. In fact, a large amount of oil drifting to the coast of Vietnam takes place every year; in particular, this was found in the period from 2006 to 2007 when over 1,700 tons of oil flowed to the coast of 20/28 coastal provinces in Vietnam was collected. Estimated loss was over 200 billion Vietnam Dong (around 8 million US dollars) (Ministry of Natural Resources and Environment, 2010).

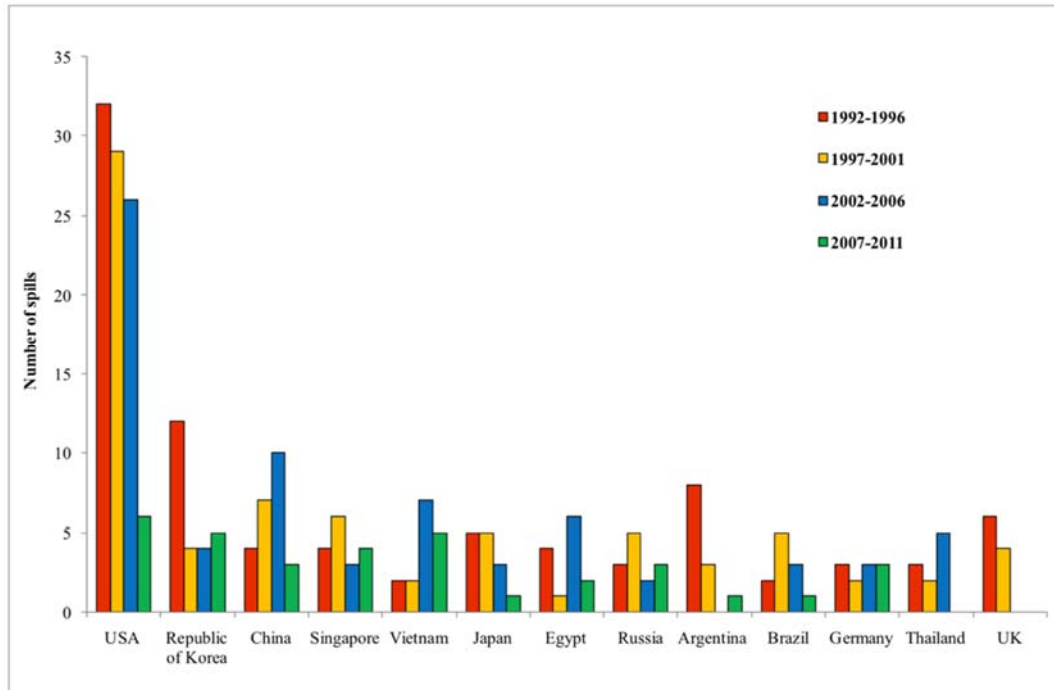


Figure 1: Number of tanker oil spills by countries (countries that experienced equivalent to or greater than ten oil spills from 1992 to 2011)

Source: Susannah Musk, 2014

Presently, efforts to solve the problem of marine pollution due to oil from ships in Vietnam have been limited and ineffective due to institutional inadequacies and lack of coordinated policies on pollution treatment and compensation of all concerned ministries and branches, including the problem of ship owners' obligations and capacities in payment of compensation for damage caused by oil pollution. This issue is of top concern in Vietnam as well as in other coastal states..

In the trend of globalization, to create favorable conditions for the operation of Vietnamese fleets, the 1992 CLC Convention was ratified by the government on June 17, 2003. Being a contracting state of the 1992 CLC Convention has contributed to improving the limitations of the mechanism of compensation for marine pollution caused by oil in Vietnam. However, Vietnam has not ratified the 1992 FUND Convention; so, when an oil pollution accident occurs in Vietnam's water, principally, ship owners only have to pay compensation within a certain limit according to the 1992 CLC's regulations. Unless the ship owner's liability limit covers the damage,

Vietnam cannot receive the financial resources of the International Oil Pollution Compensation Funds (IOPC Funds) to assist with the recovery of Vietnam's marine environment after an oil pollution incident (Pham Thi Gam, 2018).

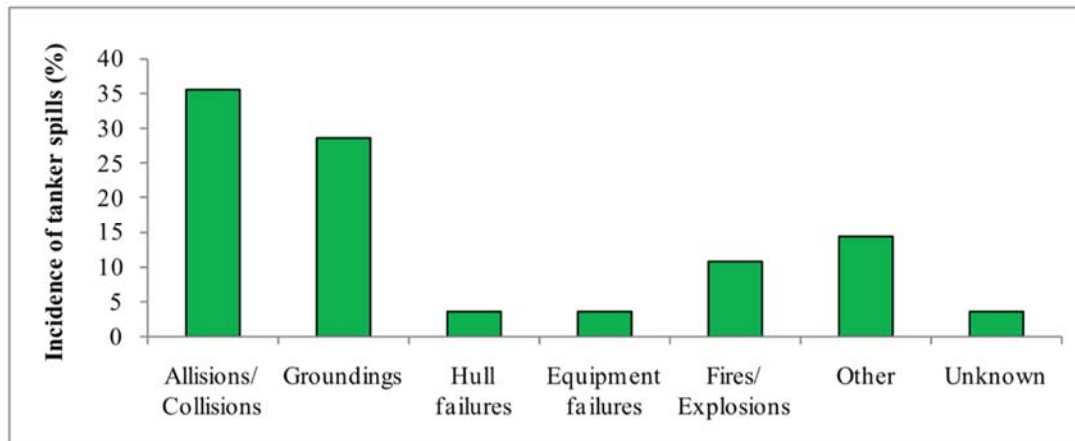


Figure 2: The incidence of tanker oil spills > 700 tonnes by causes of spill, 2002-2011

Source: Susannah Musk, 2014

Marine pollution from oil can arise from many different causes: for instance, oil tankers crashing in the ocean; the operation of seaports in coastal waters; oil spills from oil rigs; the exploitation process on the continental shelf; oil processing at oil refining facilities; the sinking of over-due oil rigs and war or geological tectonic activity as given above. For this dissertation, however, the author only studied in-depth issues of compensation for oil pollution from ships, specifically limited liability tanker owners, and additional compensation provided through the IOPC Fund, difficulties and obstacles in the implementation process and proposing recommendations and solutions.

### Chapter 1.2: Aim of research

The aim of this paper is to review the national laws of Vietnam related to compensation for ship-source oil pollution. On the basis of comparing the provisions of international law, this paper identifies both pros and cons for compensation for oil pollution from the IOPC Fund. This paper also attempts to find out the limitations in the national law



of Vietnam, both in terms of theory and legislation and implementation, thereby, proposing solutions and recommendations to establish and improve the existed system of Vietnamese law on compensation for damage caused by oil pollution.

In regard to the aim that the author has set, the objective are :

- To contribute an overview of the development of compensation provisions from oil pollution from ships in Vietnam national laws.
- To review the provisions developed to implement the CLC Convention in Vietnam.
- To highlight the similarities and differences between the set of regulations present in the Fund Convention and Vietnam's national laws related to compensation from oil pollution from ships.
- To propose specific views and recommendations to promote national laws of Vietnam on compensation for oil pollution.

#### Chapter 1.3: Research questions

- What are the national regulations that apply to compensation of oil pollution claims from vessels in Vietnam?
- Which provisions have been developed in Vietnam's national laws to implement the CLC Convention?
- Are there similarities or differences between the national laws of Vietnam on compensation of oil pollution claims and the rules found on the IOPC Fund Convention?

#### Chapter 1.4: Importance of investigation

Currently, it is difficult to claim for compensation not only for cases between domestic entities but especially for many cases caused by foreign vessels when an incident occurs due to the lack of separate compensation mechanisms for oil pollution damages. Enforcement measures are mostly limited to administrative orders and the amount of a fine is not sufficient to deter a significant oil spill incidents. In this situation, the general research on the current status of national laws of Vietnam and the international

treaties that Vietnam has ratified, as well as the analysis of international laws/conventions on compensation for damages caused by oil pollution, is to make assessments and clarify scientific basis for the improvement of existing legal regulations on compensation for oil pollution in Vietnam. The research reveals both the advantages and disadvantages as well as the limitations in implementation and enforcement. This study is pertinent not only because of its assessment of scientific bases but also because it recommends necessary solutions to improve the legal system on environmental protection in maritime activities .

#### Chapter 1.5: Research methodology

During the research, the author used the following methods: legal and empirical research and the comparative method, in order to identify the current status of Vietnam national laws on compensation for damages caused by oil pollution as well as to see the differences and the weakness of Vietnamese regulations related to compensation for damages caused by oil pollution compared to the provisions of IOPC Funds regulations. Other complementary methods utilized have been statistical methods to draw upon the nature of things and phenomena subject to research. Besides, the author will use SWOT method (Strengths – Weaknesses – Opportunities – Threats) to have a clearer picture of the laws of Vietnam (in the aspects of the strengths and weakness of Vietnamese laws) which helps identify what should be improved in the laws of Vietnam as well as the opportunities and threats Vietnam will face in terms of ratifying the 1992 FUND.

#### CHAPTER 2: LITERATURE REVIEW

The issue of pollution from oil tankers is no longer new , but the development of relevant laws/regulations to regulate the compensation liability for oil pollution in Vietnam continues to be a significant problem. There are a limited number of researches and analyses on the issue currently available about Vietnam; those which do exist include: the scientific journal article "National law of some countries on oil pollution prevention in the sea" from the Journal of Legislative Studies (Institute of

State and Law, 2018); "overview of national law in Vietnam on prevention of oil pollution at sea" by Associate Professor Nguyen, B. D. from Vietnam National University, Ha Noi; "Provisions of international laws on compensation for oil pollution from ships" from the thesis on Law written by Dr. Mai, H. D. (VNU University of Economics and Business) the book "Environmental protection: Problems and Solutions" from Dr. Nguyen, H. T.; the national level research project "Establishing a legal basis for assessing and compensating for oil pollution in the water of Vietnam" by the Centre for the Sea and International Marine Law, Chairman, Associate Professor Dr. Nguyen, B. D.

In order to complete the following study as well as possible, the author collected and used information and sources from the National Library of Vietnam; articles, magazines, reports and electronic documents from the official website of the Ministry of Transport, Vietnam Maritime Administration, Ministry of Natural Resources and Environment and the Centre for the Sea and International Marine Law.

### **Part 1: Overview of the situation in Vietnam**

From the thesis, researches and articles cited below, these authors have provided a comprehensive picture of Vietnam with a full description of the geographical location of the mainland, the archipelago islands of Vietnam and the current status of oil pollution in Vietnam.

According to Colonel Nguyen Duc Thang, - a researcher of Professor at the Institute of Social Sciences and Humanities under the Ministry of Defense, Vietnam is a coastal country, with about 3,260 km total length of coastline. The area of the water of Vietnam occupies 29% of the South China Sea area, an area three times larger than the land territory. There are more than 3,000 large and small islands in the area of Vietnam's water. More than 50% of the population lives on off the tradition of fishing and catching on the sea and lives in coastal provinces. Vietnam is divided into three main regions: the Gulf of Tonkin, the East Sea and the South-West Sea; in which, the area of the East Sea covers over 500,000 km<sup>2</sup>, including the two archipelagoes Hoang Sa and Truong Sa (Nguyen, 2014). Besides, the location of Vietnam is in a favorable

geographic location which is in the busy trade of SCS area where more than half of the world's annual merchant fleet tonnage passes through Sunda, the Straits of Malacca and Lombok, with the majority remaining to in the SCS. Roughly a third of global crude oil and nearly half of the global LNG trade passes through the SCS; that has made the SCS become one of the most significant trade routes all over the world. In 2011, around 15 MMbbl/d of oil passed through the Strait of Malacca, the quickest sea route between African and Asian markets and the Persian Gulf suppliers. A notable amount of crude (1.4 MMbbl/d) goes to terminals in Malaysia and Singapore by passing through the canal, where it is processed and shipped as refined petroleum goods. Following, the rest of it this crude oil ( around 12 MMbbl/d) proceeds through the SCS to Japan and China (3.2 and 4.5 MMbbl/d, sequentially), going to the two highest energy consumers in Asia. Subsequently, almost 15 percentages of oil flowing through the SCS goes on to the East China Sea, essentially to South Korea (EIA, 2013). The favorable geographical location facilitates the economic development of Vietnam, but it is also known as the reason for the increased the possibility risk of oil pollution. According to the Summary Report of the Project "Study and propose Vietnam to participate in international treaties on response, remediation and consequences of oil spills in the sea" from Hoang, DD, Vietnam is considered one of three countries with spill oil is the most oil spills are happening in the world; however, claiming compensation is too modest (Hoang, 2011). The remedy of environmental pollution after oil spills is very limited; over 70% of oil spills in Vietnamese waters have not been compensated. (Pham, 2018). A large amount of oil drifting to the coast of Vietnam takes place every year. Specifically in 2006 and 2007, over 1,700 tons of oil was collected flowed too along the coasts of 20 coastal provinces in Vietnam was collected (Pham, 2013). The statistics of the Vietnam Maritime Administration in 2008 revealed that only in the period of 1995-2004, nearly 50 oil spills were recorded with about 120,000 tons of spilled oil in the water of Vietnam. Among those cases, only 14 cases were compensated for with a total amount of USD 5,501,000 (Vinamarine, 2008). The author collected some ther theses which wrote about report on oil spill incidents in Vietnam through years were also examined for the scope of

this paper. Based on the historical materialist and a dialectical method of reasoning and the methods of listing and analyzing case studies, the authors have shown a quite a complete view of the pollution situation in Vietnam was provided. Stated in the report of the Vietnam Administration of Seas and Island from 1987 to 2016, almost 90 oil spill incidents occurred in Vietnam (Pham, 2013). In 2008, the authors -Nguyen, H. D., Dao, M. D., Nguyen, H. Q., & Nguyen, T. T. wrote a report – “Oil spills in Vietnam - facts and challenges” presented at the *International Oil Spill Conference* and had a that looked at the following list of some serious oil spill incidents in Vietnam since between the years 1994 till and 2008:

- On October 3, 1994, the M/V Neptune Aries flagged by Singapore crashed into a berth in Sai Gon Port and released 1684 tonnes of DO oil. As a result, released oil polluted around 300 km<sup>2</sup> of the sea, causing serious damage to the local aquaculture industry and marine environment. Damage from the oil spill was approximated at USD 28 million , but the shipowner was only compensated for \$ 4.2 million.
- On March 20, 2003, The case of the barge Hong Anh 06 carrying oil was wrecked at buoy No.7, Vung Tau - Sai Gon channel. The barge overflowed 40 tons of unrecoverable oil. The shipowner - Trong Nghia Company (Binh Duong) had only bought hull insurance with the amount of VND 500 million (estimated 21,524 USD), while the cost of recovering the barge and handling the oil spill was more than VND 2 billion (estimated 86,100 USD). Although the shipowner has to bear criminal responsibility, the State also takes a considerable financial hit not to mention harm to the environment which are difficult to overcome (Vinamarine, 2008).
- On May 12, 2005, the M/V Mimosa of Petro Vietnam was sunk after a crash with M/V Trinity from Liberia in the Dai Hung field - 180 nautical miles from Vung Tau city, releasing more than 100 tons of oil from its hull. Although the shipowner put in USD 2 million , it does not mean that with that money the consequences of the oil spill caused to Vung Tau marine environment may be dealt with (Vinamarine, 2008).

Furthermore, there are many oil spill incidents that for which damages have not yet been calculated the damage yet. According to the thesis named “Marine Pollution-Challenges for sustainable economic development in Vietnam”, Tran revealed that the water area of Vung Tau, with the top level of oil product, plus has the most leading level of organic waste dumped into the ocean (Tran, 2011). Additionally, in 2013, an oil spill in Binh Dinh Province which affected more than 13,800 m<sup>2</sup> of fishery area, polluted 7 km of shoreline as well as killed numerous marine species and fishes (Binh Dinh Province Portal, 2013). In Quang Ninh Province in 2006, 50 tons of diesel oil (DO) and 150 tons of fuel oil (FO) were spilt in the “My Dinh” casualty. Merely 65 tons were collected, and the rest was still at sea. This area is near the United Nations Educational Scientific and Cultural Organization (UNESCO) World Heritage Site Ha Long Bay (Vietnam Ministry of Natural Resources and Environment, 2013).

Vietnam has been a member of the Protocol 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage (CLC 92) and the International Convention on Civil Liability for Bunker Oil Pollution Damage (BUNKER 2001) (Vietnam Marine Administration, 2019) for more than fifteen years. On 8 May 2003, the President issued Decision No. 232/2003/QD/CTN on the accession to the Protocol of 1992 amending International Convention on Civil Liability for Oil Pollution Damage (CLC 1992). (Vinamarine, 2013). The International Convention on Civil Liability for Oil Pollution Damage in 1969, as amended by Protocols of 1976, Protocol of 1984 and Protocol of 1992,. the International Convention on Civil Liability for Oil Pollution Damage 1992 (CLC 92) came into force since May 30, 1996; Effective date for Vietnam: June 17, 2004. (Vinamarine, 2013).

Vietnam has one producing refinery, the 130,000-b/d Dung Quat refinery established in 2009. Vietnam’s state-owned Vietnam Oil & Gas Corporation (PetroVietnam) proposes to extend the crude distillation capability and to promote Dung Quat’s capacity to handle sweet and less costly sour crude oil from Venezuela, Russia and the Middle East. The refinery’s increase is expectedly adding 40,000 b/d by 2022, and upgrading the quality of refinery’s fuel to Euro IV standards and handling a wider variety of crude grades. The government of Vietnam and its project co-workers expect

to commission a second refinery - Nghi Son in 2018. Nghi Son will add 200,000 b/d of capacity. Numerous other refinery projects are under planning , but investment difficulties are always a barrier (EIA, 2017). Those operating refineries are supposed to supply 50% of the amount of national consumed fuel, which helps reduce the amount of annual imported oil. The overall objective of Vietnam's maritime strategy through 2020 is to build and comprehensively develop in the aspects of economic, social, scientific-technological, economic and marine sectors, contributing around 53% to 55% of total GDP . Solving social problems well and significantly improving people's lives in coastal areas are also added to the strategy of Vietnam until 2030. Along with building a number of regional commercial ports and forming a number of influential economic groups, Vietnam will build a number of active economic zones along the coast, and build a unified and effective integrated management agency on the sea, expanding international cooperation in the sea fields (Socialist Republic Of Vietnam, 2011).

### **Part 2: Inadequacies in Vietnamese law**

Based on Article 222 and Article 223 in the Maritime Code 2005, they which stipulate the establishment of compensation funds, however it can be understood that the owners, or the charterers or beneficiaries of limited civil liability may establish funds. The establishment of the fund is not mandatory. According to a study of by Vinamarine, it is necessary to build and complete a system of adequate legal documents on marine pollution prevention, with sufficient and specific contents and strict sanctions; as well as to refer to regulations related to marine environmental pollution in international conventions on the basis of which are specified in domestic legal documents to create a legal basis for the implementation of conventions (Vinamarine, 2013).

Based on the methodology of Marxism-Leninism on the law, Nguyen, T.T.U said that “the legal system on the environment in our country has many inadequacies, general lack of clarity, so it is difficult to determine which behaviour is to comply with the provisions of law, and at the same time environmental law in some areas that are lacking, e.g. what kind of responsibility are the regulations on the responsibility to

overcome environmental pollution? Administrative or civil liability is still a matter of controversy” (Nguyen, 2013). She also supposed that there is no clear distinction between different responsibilities for environmental recovery and restoration under the law on acts and liability for compensation for civil law. Moreover, because there is no separate mechanism for compensation for oil pollution under the 1992 CLC Convention, so when oil pollution occurs, the settlement of compensation for damages causes both the authorities and victims to be confused. The regulation for levels also has overlap. In the thesis of Mai, H. D. and Nguyen, B. D., by Marxism-Leninism method on the law, two authors also mentioned and pointed out the same issue as Nguyen, T.T.U did. Although Mai, H. D. and Nguyen, B. D. did researched on the issues of oil spill preparedness and response, they gave an overview of the national law system of Vietnam related to oil pollution involvined compensation. It provides primary ground for the author to research on; however, Mai, H. D. and Nguyen, B. D. did not have a recommendation for improving theat issues and did not look at special legal documents which regulate guidelines on compensation. As a result, this paper will go deeper, based on the contribution that those researches provide.

In a thesis of Vu, T. H. – “Establishing and completing the mechanism for resolving disputes in the field of environmental problems in Vietnam”, she looked at and analysed theoretical issues about environmental disputes, dispute settlement mechanisms and specific requirements of environmental dispute resolution thereby seeking ways to reasonably resolve conflicts of interest in this area. Based on historical materialism and dialectical materialism, this topic has fully demonstrated the environmental dispute settlement mechanism in Vietnam, but this work was done before Luat Environmental Protection in 2005 (replaced by the Law on Environmental Protection 2014) (Vu, 2004).

The Vietnam Maritime Administration supposed that it was necessary to study and continue to join international conventions on oil pollution prevention, namely the 1992 FUND Convention. This is a supplement to the 1992 CLC Convention on compensation for damages caused by oil pollution. Participating in this Convention, the rights of Vietnamese citizens will be ensured when suffering from oil spill



pollution from tankers;, as well as, it will help Vietnam with additional funds to clean up the marine environment. The implementation of the marine environmental protection obligation has been stipulated in the 1982 Law of the Sea Convention (United Nations, 1982). Moreover, it also created a unified legal environment, facilitating the process of complaint and settlement compensation within the framework of ASEAN countries and the world scope (Vinamarine, 2013).

From the above studies, we can see that the cause for difficulties for organizations and individuals to claim compensation is the determination of damages and the process of claiming damages due post-compensation. Results of oil pollution incidents on the sea must apply various normative documents that as indicated . They already gave us a general view of this issue, but most researches found were written before the amendments of three primary laws: Law on Environmental Protection 2014, Vietnam Maritime Code 2015 and Criminal Code 2015. By legal and empirical research methods, this paper will look at the implementation of national legislation of Vietnam complying with international conventions that Vietnam ratified and compare it to the regulations of the IOPC Funds on compensation for oil pollution damage in order to learn from its strengths.

## CHAPTER 3: OVERVIEW OF UNCLOS 1982, THE 1992 CLC AND THE 1992 FUND – BASIC GROUND FOR NATIONAL LAW REGULATING COMPENSATION FOR SHIP-SOURCE OIL POLLUTION

In this chapter, the author will use the legal research method to get an overview of the international framework on civil liability regulation and compensation for damages caused by oil pollution. The author reviews international conventions such as the UNCLOS 1982, the 1992 CLC, the 1992 FUND and the international fund - IOPC Funds. These conventions directly address civil liability and compensation for damage caused by oil pollution; Besides, these conventions are known as the international regime for compensation and civil liability for damages caused by oil pollution. This chapter will look at the main provisions in mentioned conventions which relate to compensation and civil liability for damages caused by oil pollution.

### Chapter 3.1: Basis definitions

“Oil”: included in the 1992 CLC, “oil” is defined as “ any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship.”

The definition of “oil” is the same as it is in the 1992 CLC, but the FUND brings new definition of the phrase “Contributing Oil” which means crude oil and fuel oil as defined in sub-paragraphs (a) and (b) below:

- a) *"Crude Oil" means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation. It also includes crude oils from which certain distillate fractions have been removed (sometimes referred to as "topped crudes") or to which certain distillate fractions have been added (sometimes referred to as "spiked" or "reconstituted" crudes).*
- b) *"Fuel Oil" means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the "American Society for Testing and Materials' Specification for Number Four Fuel Oil (Designation D 396-69)", or heavier.*

”Pollution of marine pollution”: according to UNCLOS 1982, ”pollution of marine pollution” is defined as *“the introduction by man, directly and indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities”*.

On the other hand, based on the definitions in the 1992 CLC, “Pollution damage“ means:

- a) *“loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken;*
- b) *the costs of preventive measures and further loss or damage caused by preventive measures.”*

### Chapter 3.2: United Nations Convention on the Law of the Sea – UNCLOS

The United Nations Convention on the Law of the Sea lays down a comprehensive regime of law and order in the world's oceans and seas settling rules governing all uses of the oceans and their sources. It enshrines the idea that all obstacles of ocean space are interrelated and necessitate to be tackled as a whole. On 10 December 1982, the Convention was opened for being signed in Montego Bay, Jamaica. The Convention included in one instrument traditional rules for the uses of the oceans and at the same time revealed new legal regimes and concepts and solved new anxieties. The Convention also implemented the framework for the further improvement of precise spheres of the law of the sea. Now, it is recognized globally as the regime engaging with all concerns for the law of the sea. The Convention contains 320 articles and nine

annexes, covering complete perspectives of ocean space, such as regulation of the environment , transfer of technology, delimitation, maritime economy, marine scientific research as well as commercial activities and the settlement of disputes tying to ocean matters.

*“Article 235*

*Responsibility and liability*

*2. States shall ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction.”*

**Chapter 3.3: The International liability and compensation regime**

The international liability and compensation legal framework is presently based on three tiers – these three tools are listed in Table 1 and apply to pollution damage caused by oil spills from tankers in the territory and the EEZ or equal area of Member States to the relevant treaty mechanism.

Table 1: Three tiers applying to liability and compensation for pollution damage caused by oil spills from tankers

1992 Civil Liability Convention	1992 Fund Convention	Supplementary Fund Protocol
<p>The 1992 CLC provides a first tier of compensation which is paid by the owner of a ship which causes pollution damage.</p> <p>For ships carrying more than two thousand tonnes of oil as cargo in bulk, the shipowner is obliged to maintain insurance to cover its liability under the 1992 CLC</p>	<p>The International Oil Pollution Compensation Fund, 1992 (1992 Fund) was set up under the 1992 Fund Convention and is financed by the oil industry and managed by governments. The 1992 Fund provides a second tier of compensation when the amount available under the 1992 CLC is insufficient and also when the shipowner is exempt from liability or is financially incapable of meeting its obligations under the 1992 CLC.</p>	<p>The Supplementary Fund provides a third tier of compensation on top of the amount available under the 1992 Fund Convention in States which are also Parties to the Supplementary Fund Protocol.</p>

Source: IOPC FUNDS, 2018

### Chapter 3.3.1: International Convention on Civil Liability for Oil Pollution Damage

The 1992 Civil Liability Convention (1992 CLC) dominates ship owners' responsibility for oil pollution damage. It was first adopted on 29 November 1969 and entered into force on 19 June 1975. The 1969 CLC was replaced by the 1992 Protocol which was adopted on 27 November 1992 and entered into force on 30 May 1996.

Under this Convention, the registered shipowner has a strict responsibility for the damage caused by the continuous oil discharging from his ship. Which means that he is responsible even if there are no errors on his part. He is only exempt from liability if he proves that:

- *”the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character, or*
- *the damage was wholly caused by an act or omission done with the intent to cause damage by a third party, or*

- *the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids, in the exercise of that function.” (IOPC FUNDS, 2019).*

Owners usually have the right to limit their liability with the amount circumscribed by the ship's capacity, as presented in the Table 2.

Table 2: Limitation of shipowner's liability to an amount established by ship's size under the 1992 CLC

SHIP'S TONNAGE	CLC LIMIT
Ship not exceeding 5 000 units of gross tonnage	4 510 000 SDR *
Ship between 5 000 and 140 000 units of gross tonnage	4 510 000 SDR plus 631 SDR for each additional unit of tonnage
Ship 140 000 units of gross tonnage or over	89 770 000 SDR

Source: IOPC FUNDS, 2019

Pollution damages caused by oil spills in the territory (involving territorial waters) of a Member State are covered by the Convention. The Convention requires that insured vessels maintain insurance or other financial security methods in the amount equivalent to the owner's total liability for an incident (IMO, 2019).

The Convention applies to all ships that transport large volumes of oil as cargo, but only ships transporting over 2,000 tons of oil are required to have insurance concerned with oil pollution damage. Any claim for pollution damage under the 1992 CLC can only be made to registered owners of the ship concerned. This, in principle, does not

prevent victims from claiming outside the Convention from non-shipowners (IOPC FUNDS, 2019). Nevertheless, the 1992 CLC strictly prohibited requests against shipowners or their agents, pilots, members of crew, charterers, managers, operators or any person exercising salvage actions or taking precautions unless the damage was caused by a personal act or omission of the person concerned, causing damage or being reckless, and with the awareness that such damage could occur.

The Protocol of 1992 additionally extends the scope of the Convention to cover pollution damage occurred in the EEZ or equivalent section of a Member State. The Protocol involves pollution damage as before, but compensation for environmental damage is bounded to the costs incurred for reasonable means to restore the contaminated environment. It also allows the costs acquired for preventive measures to be restored even without an oil spill, presented that there is a serious and imminent risk of contamination. The Protocol of 1992 obliges State Parties to the Protocol of 1992 to issue certificates to vessels registered in countries that are non-members of the 1992 Protocol so that shipowners can obtain a certificate for both the 1969 and 1992 CLC, even if the ship has registered in a country that has not ratified the Protocol of 1992 (IOPC FUNDS, 2019).

### **The Special Drawing Right (SDR)**

The SDR is a global reserve asset, built by the International Monetary Fund (the IMF) in 1969 to enhance its Member States with standard reserves. 204.2 billion SDR (approximately 291 billion USD), so far, has been allocated to members, with SDR 182.6 billion distributed in 2009 following the global commercial crisis. The value of SDR is based on a five-currency 'basket': the Euro, USD, Chinese renminbi, pound and Japanese yen (IMF, 2019).

SDR acts as an accounting unit of the IMF and other international associations. SDR is not a currency, nor is it a necessity for the IMF. Instead, this is a potential obligation for freely usable currencies of IMF members. These currencies may also be exchanged SDR (IMF, 2019).

Chapter 3.3.2: International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND) 1971/1992 and the protocol 2003  
 Adoption of the 1971 FUND was on 18 December 1971 and it entered into force on 16 October 1978. The 1971 FUND was superseded by the 1992 Protocol which was adopted on 27 November 1992 and entered into force on 30 May 1996.

Table 3: International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND) 1971/1992 and the Protocol 2003

<b>Fund/ Amendments</b>	<b>Adopted</b>	<b>Effective Date</b>	<b>Remarks</b>
<b>FUND, 1971</b>	18 Dec. 1971	16 Oct. 1978	
<b>Protocol of 1992</b>	27 Nov. 1992	30 May. 1996	The 1992 protocol replaces the 1971 Convention
<b>Protocol of 2003</b>	16 may. 2003	03 Mr. 2005	

Source: IOPC FUNDS, 2019

There are currently 115 States Party to the 1992 Fund Convention and 32 States Party to the Supplementary Fund Protocol.

Amendments increased the compensation limit by 50% from the limits set in the 1992 Protocol, as follows:

The 1992 Convention, supplementing CLC in 1992, set up for victims a compensation regime when compensation under the 1992 CLC was not possible or unequal. The 1992 Fund pays compensation when:

- *“Damage exceeding the liability limit of shipowners under CLC 1992,*
- *Or the shipowner is exempt from liability under CLC 1992, or*
- *Owners cannot afford to meet their obligations under CLC 1992 and insurance is not enough to pay valid claims.”*

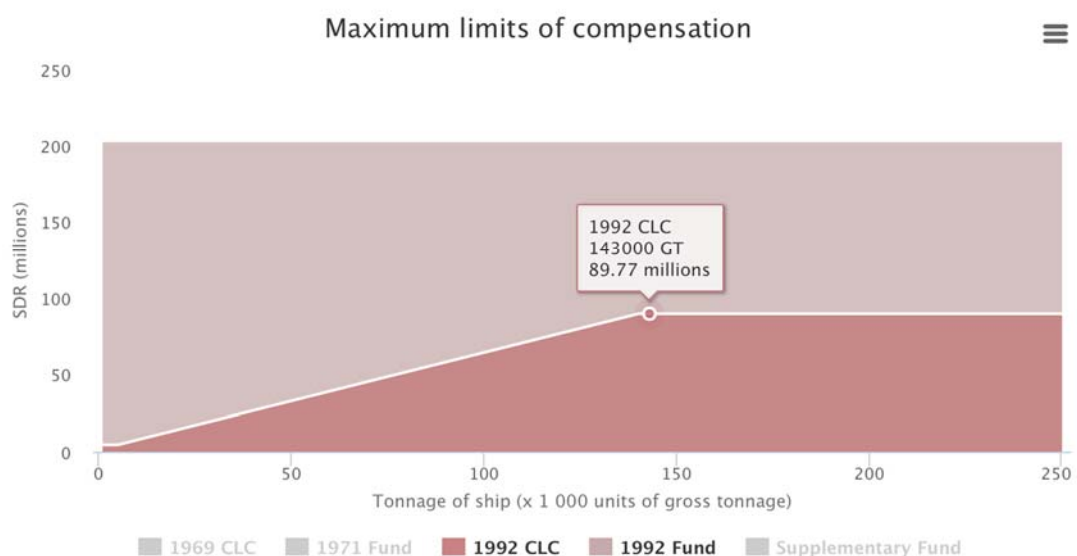
The highest compensation that the 1992 Fund paid is 203 million SDR for incidents happening on/after November 1, 2003, regardless the ship's size. For problems that



occurred before that date, 135 million SDR is the highest amount paid which includes actual amounts paid by the shipowner under the CLC 1992.

Figure 3 reveals the comparison of the maximum compensation provided under the 1992 CLC and the 1992 FUND.

Figure 3: Limitation of compensation to an amount established by ship's size under the 1992 CLC and the 1992 FUND



Source: IOPC FUNDS, 2019

In the 1992 FUND, there are the following additions and changes in provision - "Compensation" on penalties as set out in section 4, Article 4.:

*“4. (a) Except as otherwise provided in subparagraphs (b) and (c) of this paragraph, the aggregate amount of compensation payable by the Fund under this Article shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under the 1992 Liability Convention for pollution damage within the scope of application of this Convention as defined in Article 3 shall to exceed 203.000.000 units of account.*

*(b) Except as otherwise provided in subparagraph (c), the aggregate amount of compensation payable by the Fund under this Article for pollution damage resulting*

*from a natural phenomenon of an exceptional inevitable and irresistible character shall not exceed 203.000.000 units of account.*

*(c) The maximum amount of compensation referred to in subparagraphs (a) and (b) shall be 300.740.000 units of account with respect to any incident occurring during any period when there are three Parties to this Convention in respect of which the combined relevant quantity of contributing oil received by persons in the territories of such Parties, during the preceding calendar year, equaled or exceeded 600 million tons.*

*(d) Interest accrued on a fund constituted in accordance with Article V, paragraph 3, of the 1992 Liability Convention, if any, shall not be taken into account for the computation of the maximum compensation payable by the Fund under this Article.*

*(e) The amounts mentioned in this Article shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the decision of the Assembly of the Fund as to the first date of payment of compensation.”*

Besides, the provisions of Article 6 of the 1992 FUND also provides for rights to compensation; Article 6, it is emphasised that “*within three years from the date when the damage occurred.. no [case shall an] action be brought after six years from the date of the incident which caused the damage.*”

However, for the right to receive a large compensation for marine pollution due to oil under the 1992 FUND, there is an obligation to contribute money to the fund specified in Article 10 - Contribution:

*“1. Annual contributions to the Fund shall be made in respect of each Contracting State by any person who, in the calendar year referred to in Article 12, paragraph 2(a) of (b), has received in total quantities exceeding 150,000 tons:*

*2. (a) For the purposes of paragraph 1, where the quantity of contributing oil received in the territory of a Contracting State by any person in a calendar year when aggregated with the quantity of contributing oil received in the same Contracting State in that year by any associated person or persons exceeds 150,000 tons, such person shall pay contributions in respect of the actual quantity received by him notwithstanding that that quantity did not exceed 150,000 tons.”*

### Chapter 3.3.3: The Supplementary Fund Protocol

The International Oil Pollution Compensation Supplementary Fund, 2003 (Supplementary Fund) was adopted in 2003 and entered into force two years later. The Supplementary Fund supplies extra compensation exceeding the amount regulated under the 1992 Fund Convention in 1992 Fund-Member States which are also Party to the Protocol. 750 million SDR is the complete available sum for compensation for each incident, involving guidelines under the 1992 Conventions.

### Chapter 3.4: IOPC Funds

The International Oil Pollution Compensation Fund (IOPC Fund) provides commercial compensation for oil pollution losses that occur in member states, due to tankers' oil spills (IOPC, 2019). Although being established under the auspices of IMO, the Funds are independent legal entities. The only States which can may become Members of the IOPC Funds which are intergovernmental organisations outside the United Nations (the UN). Otherwise, it also follows systems which are similar to those of the UN. Since their being established, there are 116 member states of the 1992 FUND and 32 members of the Supplementary Fund.

The history of the IOPC Funds began with the oil spill from Torrey Canyon in 1967, running aground near the Scicilian Isles. This case showed such serious issues in the lack of an international agreement on liability and compensation. It, as well , led the international community to settle a compensation regime for victims of oil pollution, under the auspices of the IMO. Over time, the increase in the amount of compensation available for main episodes led to the expansion of the scope of the regime. As a result, the 1992 Civil Liability Convention and the 1992 Fund Convention were set up and

are now well-known as two international tools. Units that receive specific types of oil by seaborne trade contribute finance to IOPC funds. The amount of oil received in the associated calendar year, the Fund administration costs along with the payment for expected complaints are the ground for these finance contributions. Annual donations to the Fund will be made in regard of each Contracting State by any person or organisation who has received oil exceeding 150,000 tons in any calendar year as illustrated in Figure 4 (IOPC FUNDS, 2019).

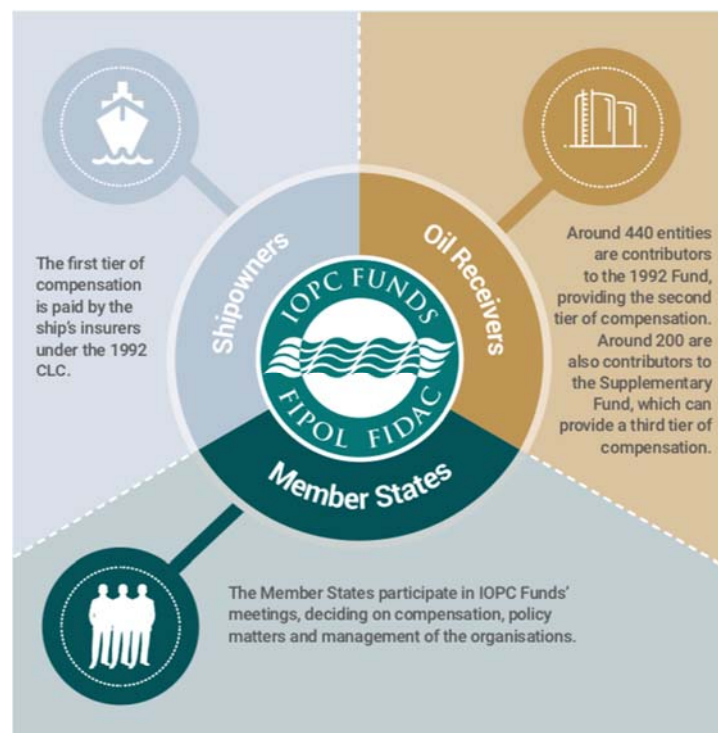


Figure 4: Contributors to IOPC Funds

Source: IOPC, 2011

Since its founding, the 1992 Fund and the preceding 1971 Fund have provided financial assistance for 150 incidents of various sizes globally. In most cases, all complaints have been resolved outside the court.

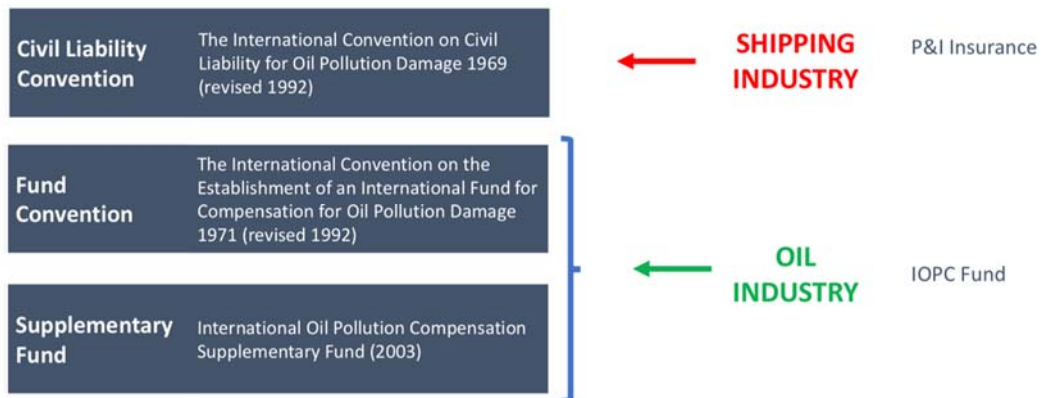


Figure 5: Divisions of responsibility for oil pollution compensation of the three IMO tiers

Source: AMSA, 2016

“Since their establishment, the 1992 Fund and the preceding 1971 Fund have been involved in 143 incidents of varying sizes all over the world. In the great majority of cases, all claims have been settled out of court. No incidents have occurred so far which involve the Supplementary Fund.” (IOPC FUNDS, 2011).

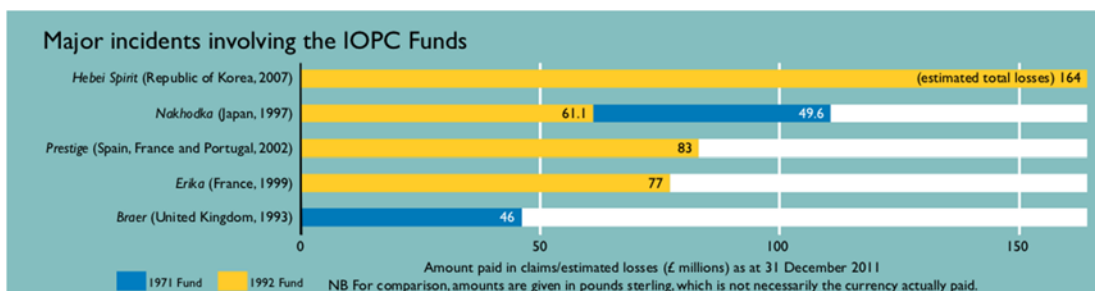


Figure 6: Major incidents involving the IOPC Funds

Source: IOPC FUNDS, 2011

As listed in the Table 4, major incidents have occurred in the Asian -Pacific area that received compensation from the IOPC Funds.

Table 4: Major incidents which received compensation under the regulation of CLC and FUND in Asian – Pacific area

<b>Incident</b>	<b>Date of incident</b>	<b>Place of incident</b>	<b>Quantity of spill (tonnes)</b>	<b>Flag State of ship</b>	<b>Gross tonnage</b>	<b>CLC limit (SDR)</b>	<b>CLC + FUND limit (SDR)/ Compensation</b>
<b>Singapura Timur</b>	27.05.2001	Malaysia	Unknown	Panama	1 369	102,000	US\$ 846 396 and ¥11 436 000
<b>Kyung Won</b>	11.09.2003	Namhae, Republic of Korea	100	Republic of Korea	144	3 million	KRW 3,328,451,732
<b>Solar 1</b>	11.08.2006	Guimaras Strait, Republic of the Philippines	2 000 tonnes of industrial fuel oil	Republic of the Philippines	998	4.51 million	203 million
<b>Hebei Spirit</b>	07.12.2007	Tae-an, Republic of Korea	10 900	People's Republic of China	146 848	89.77 million	KRW 321,619 million
<b>Shoko Maru</b>	29.05.2014	Himeji Port, Hyogo Prefecture, Japan	Less than 50 tonnes of bunkers on board	Japan	998	4.51 million	203 million
<b>Trident Star</b>	24.08.2016	Malaysia	Unknown	Malaysia	3 177	4.51 million	203 million

Source: IOPC Funds, 2019

The 1992 CLC and the 1992 FUND, together with the 2003 supplementary protocol, serve as practical tools under the auspices of the IMO in civil liability and compensation for damage caused by oil pollution to contracting countries. The IOPC Fund provides compensation to members of the Conventions who experience environmental damage caused by oil. This is a significant change in accountability and responsibility-sharing among members in order to recover from oil damages, especially environmental losses (hard to be estimated and to overcome). According to the 1992 FUND, annual contributions to the Fund will be made to contracting countries that receive more than 150,000 tons of oil.

## CHAPTER 4: OVERVIEW OF VIETNAM'S NATIONAL LAWS IN COMPENSATION AND LIABILITY FOR DAMAGE CAUSED BY OIL POLLUTION

### Chapter 4.1: Current oil spill cases and compensation of oil spill incidents in Vietnam

Vietnam is located on the main transport route from the Middle East to Southeast Asian states such as China, Japan and South Korea. The waters of Vietnam connect

two big oceans - the Indian Ocean and the Pacific Ocean, which is one of the maritime axes with enormous traffic volume, of which 70% are oil tankers. Therefore, the risk of oil spill incidents and marine environmental pollution in Vietnam is extremely high. , Vietnam has 1,320 ships 11.3% of which are tankers (148 ships) with 1,267,693 GT and 2,075,591.84 DWT. Currently, Vietnam has 272 ports with about 92.2 km of wharf length with a total capacity of over 550 million tons/year (Ministry of Transport, 2019). With rapid economic and industrial development in Vietnam, control of waste to the sea and control of marine pollution is essential. As stated in the national report on sea pollution from Vietnam in 2004, the amount of mineral oil waste discharged into the sea by industrial establishments was 844 tons/year in Ha Long City. Industrial waste was 113,216 m<sup>3</sup>/day from the key economic zone in the south and 312,330 m<sup>3</sup>/day for industrial wastewater.

Stated in the report of the Ministry of Natural Resources and Environment, from 1997 until now, there have been more than 50 oil spills on the sea and the river (because of oil exploitation and transportation activities). The causes for some of them have not been identified so far. Typical oil spills causing severe environmental pollution in Vietnam and the amount of compensation are listed as following:

1. Neptune Aries ships crashed into Cat Lai wharf - HCMC in 1994 (over 1,864 tons of DO oil was spilt) polluting 300 km<sup>2</sup> of the sea, compensated 4.2 million USD/19 million USD as assessed.
2. Oil spill from Nhat Thuan ship, on April 16, 1998: 97 tons of DO oil spilled into Nha Be River.
3. Formosa One (31,362 DWT) carrying about 21,000 tons of Gasoil crashed into a ship PETROLIMEX 01 (26,651 DWT) carrying around 20,231 tons of Gasoil and kerosene when this vessel was moored at buoy B13 on September 7, 2001. As a result, No. 1 tank of PETROLIMEX 01 was punctured and spilt over 900 m<sup>3</sup> of diesel oil to the sea in Vung Tau area. The case was compensated with 4,744,000 USD- 14.2 million according to the assessment.
4. On January 12, 2003, Fortune Freighter, a Vietnamese national (3737 GT) collided with barge AG 6139 and tugboat AG 717. The estimated amount of

oil spilt up to 30 tons of DO oil. Traffic at ELF Gas port area was interrupted for 30 hours.

5. The incident of My Dinh ship with 7276 GT, on December 20, 2004: 150 tons of DO oil and 50 tons of FO oil spilt into Cat Ba Sea.
6. Kasco Monrovia vessel collided with the wharf at Cat Lai port - HCMC on January 21, 2005, spilling 518 tons of DO oil.
7. On December 22, 2007, the Ha Loc 08 Vietnamese nationality vessel (909 GT) stabbed the vessel Hai Xuan 09 and spilt 1300 tons of DO oil.
8. On October 16, 2008, oil spill occurred in Lien Chieu's warehouse and petrol port resulted in a large amount of oil and gasoline spilling into the dyke (to prevent fires of warehouses) and spread to the sea area of Lien Chieu. In particular, the tank contained more than 2,000 m<sup>3</sup> and 3,100 m<sup>3</sup> of gasoline. The oil spill at Lien Chieu warehouse and petrol port costed rescue costs nearly VND 800 million (estimated 34,400 USD), and fishery damage was VND 122 million (estimated 4,800 USD), not to mention the compensation for environmental degradation.
9. On May 14, 2010, the vessel named Shun An Xing (flagged Chinese) sank in an area of coordinates 20<sup>0</sup>39'51"North latitude, 106<sup>0</sup>52'12" East longitude along with all goods and fuel including 57 tons of FO oil, 7 tons of DO oil and 3 tons of lubricant
10. On April 6, 2011, Binh Minh 28 ship collided with Phuc Hai 5 ship at Cu Lao Cham beach (Quang Nam Province). As a result, Binh Minh 28 ships sank with goods and fuel including 8000 litres of DO oil and 150 litres of lubricant.

Particularly in the period from 2006 to 2007, there were oil spills of unknown origin in the south and central provinces. Between January 2006 and June 2007 oil spills drifted along the shoreline of 20 provinces from Bach Long Vy Island to Ca Mau Cape. The unspecified oil spill over the coastal strip of 20 provinces in 2007 was deemed the largest ever, with 14 oil stains containing a considerable quantity of oil, estimated at 21,620 - 51,400 tons of oil spilt into the sea. Most recently, the 14.5 tons of FO oil spilt out of the oil tank of Quang Phu Sugar Plant and spread across the Tra Khuc



River. Consequently, due to a large amount of oil, the river area from Tran Phu Ward (Quang Ngai City) downstream was seriously polluted and the spill has had a long-term effect on the ecological environment.

These mentioned oil spills have made the amount of oil in Vietnam's seas ly exceed standards and far exceed the standards of the Association of Southeast Asian Nations (ASEAN). In particular, there has been several times when the amount of oil in Cai Lan's port waters is 1.75 mg/l; six times higher than the permitted limit. The amount of oil in Ha Long Bay, accounting for 1/3 of the sea area, is from 1 to 1.73 mg/litre.

Through the above statistics, it can be seen that the maritime incidents in Vietnam's seaport area are increasing with the development of seaborne trade. The consequences of those accidents to the environment are enormous, and it is difficult to overcome. The issue of oil pollution has been taken seriously; although, there has been no compensation for up to 77% of oil spills in Vietnam waters, or the 77% of cases are still in the process of being resolved.

#### [Chapter 4.2: Current status of national legislation of Vietnam](#)

The issue of environmental protection has long been focused and revised by the Vietnamese government to suit the actual situation. Vietnamese law on civil liability and damage compensation due to oil spills is covered in many laws, decrees and legal documents as outlined below:

##### **Civil Code 2015:**

Currently, there is no official legal document that fully adjusts the issue of compensation for oil pollution explicitly. So the lawsuit or complaint and the determination of environmental damages, as well as the economic losses caused by oil pollution, acts mainly based on the provisions of the 2015 Civil Code, which must, first of all, be based on the provisions on compensation for damages on extra-contractual in Chapter XX of the Civil Code 2015 and Resolution 03/2006/NQ-HDTP of the Central People's Court, guiding the exercise on extra-contractual damage compensation of several provisions of the 2005 Civil Code. These regulations will be applied and cited as one of the essential legal grounds for investigating acts of discharging or causing oil spills and polluting the environment. As stipulated in the

Civil Code 2015, liability for compensation for oil pollution will arise when there are all the following factors:

1. There must be damage occurred;
2. Must commit law violations;
3. There must be a causal relationship between damage occurring and law violation acts;
4. Must have an intentional or unintentional error by the person causing the damage.

**Law on Environmental Protection 2014 - Amendment and Supplement of Law on Environmental Protection 2005:**

Classification of damage caused by oil pollution includes two types: Damage to the natural environment and Damage to the health and lives of people, property and legitimate interests of organizations and individuals. Furthermore, the environmental protection law 2014 in clauses 160 and five articles from 163 to 167 stipulates compensation for damages caused by oil spills. It can be seen that Vietnam has focused on overcoming and compensating for oil pollution as a responsibility and obligation for all objects in the territory of Vietnam.

*“Article 160. Actions against violations*

*Article 163. Damages caused by environmental pollution and degradation*

*Article 164. Principles of handling responsibilities of organizations, individuals causing environmental pollution*

*Article 165. Determination of damages caused by environmental pollution, degradation*

*Article 166. Determination of damages caused by deterioration in environmental function and productivity*

*Article 167. Liability insurance for environmental damages” (The Socialist Republic of Vietnam, 2014)*

Additionally, the Law also stipulates that oil-polluting organizations, households and individuals are responsible for overcoming the environmental consequences, compensating for losses and bearing other responsibilities as prescribed by the law (Clause 5, Article 4) as well as regulations on environmental dispute resolution (Clause 3, Article 129) and settlement of environmental damages (Article 133). In particular, in Article 130 and Article 131, the concept of damage due to environmental pollution and the consequence of environmental pollution include the following two types of damage:

- 1. “Damage to the natural environment (understood as the degradation of function, usefulness of the environment - The decline of fauna, flora, water, air, etc. when incidents occur oil spill).*
- 2. Damage to the health, the life of people, property and legitimate interests of organizations and individuals as a result of the deterioration of functions and usefulness of the environment. The legal benefits of individual organizations are expressed through the existence of material benefits and a decline in legitimate income due to the decline in the function and usefulness of the environment because of the environmental pollution comprised of oil pollution.” (The Socialist Republic of Vietnam, 2014)*

The estimation of environmental damage costs and other losses as a basis for compensation for oil spills has been recorded in Clause 4, Article 131. Consequently, the destruction caused by environmental pollution (similar to oil pollution damages) will cover:

1. Expenses for compensation and remediation of environmental degradation;
2. Expenditures on personal insurance for the health, life of people, assets and legitimate interests of organizations and individuals affected by oil pollution (compensation for economic sectors affected by oil spills such as marine economy, tourism and salt making).

### **Vietnam Maritime Code 2015**

The operation of boats is considered one of the leading causes of oil pollution incidents in Vietnam. The establishment of the Vietnam Maritime Code 2015 has contributed to minimizing the shortcomings of the Civil Code and the Law on Environmental Protection. That is the basis for requesting ship owners and captains of vessels causing oil pollution incidents for compensation for damage according to provisions of the law. Environmental protection and prevention of marine pollution are one of the contents under the regulation of the law in articles 1 and 6 of Article 10 in the Maritime Code 2015. Furthermore, regarding the Maritime Code 2015, it can be said that it includes an appropriate number of regulations for marine environmental protection (16 articles mentioning the issue of marine environmental protection), of which there are two things directly regulating the prevention and treatment of marine pollution caused by oil (Article 28 and article 223).

According to Article 28, it is stated that:

*“Vietnamese sea-going ships shall only be employed in accordance with the purpose stated in the Viet Nam National Register of Ships provided that her construction, standing appliances and equipment, certificates, documents, competence of crew comply with the Vietnamese laws and the international treaties on maritime safety, maritime security and prevention of environmental pollution to which Vietnam is a contracting party.”*

*“When operating in seaport waters and sea waters of Viet Nam, sea-going ships employed exclusively for transportation of crude oil and oil products or other dangerous goods shall be bound to be covered by insurance policy as to the civil liability of shipowner for environmental pollution.”*

From the two above provisions, the seagoing vessel, when operating in the territory of Vietnam, must act in accordance with the provisions of Vietnamese laws and international treaties to which Vietnam is a member for the prevention of oil pollution,

which includes legal provisions on oil compensation liability. According to Article 163, Chapter XIX of the Law on Environment Protection 2014, regulating the insurance of liability for environmental damage compensation, if the purchase of liability compensation insurance is only something that the state encourages then it is a mandatory obligation of the shipowner to engage in seaport waters and sea waters of Vietnam as stated in Clause 5, Article 28, Part 5, the Maritime Code 2015 stipulating the obligation to have civil responsibility insurance for environmental pollution of oil tankers.

Oil spills or other incidents causing oil pollution often have serious environmental consequences as well as damage to the economy. Therefore, the compensation for such losses is substantial and often exceeds the capacity of owners of vessels that cause such incidents. The regulation of liability for participation in civil liability insurance for shipowners who transport oil will make compensation more convenient. Compensation for environmental, property and other damages will be repaid through the insurance fund. In particular, this Law also stipulates that pollution should not be limited to civil liability under paragraph 2, Article 300 stipulating maritime claims do not apply civil liability limits - "Maritime claims excepted from limitation of civil liability". Thus, when the ship causes an oil spill, the consideration of civil liability for compensation for damages will be resolved as stated in the 1992 Civil Liability Convention if the ship causes pollution transporting heavy oil and persistent mineral oil. Thus, according to the Vietnam Maritime Code 2015, compensation for oil pollution damages is the responsibility of all ship owners whose vessels cause oil pollution incidents in the territory of Vietnam. This obligation may arise even if the person has no error. All cases of oil pollution must be compensated for the damage. Disputes arising in maritime activities including disputes on compensation for oil pollution will be resolved by negotiation, agreement or lawsuit at arbitration or a competent court according to regulations in Article 259. If the dispute includes at least one party being a foreign organization or individual, it will settle under Article 260 of the Maritime Code 2015. If the vessel causes environmental damage by oil, the settlement of compensation shall follow the 2015 Civil Code, the Law on

Environmental Protection 2014, the Vietnam Maritime Code 2015 and the international treaties to which Vietnam is a member, namely the Civil Liability Convention 69/92. In addition, Articles 40 and 41, Section 6 "Maritime liens" of the Vietnam Maritime Code 2015 stipulate the arrest of seagoing vessels. In regards to the principle of the right to arrest seagoing ships to ensure the settlement of maritime claims, complaints give rise to the right to arrest seagoing vessels specifically allowing courts to decide whether or not to arrest seagoing vessels, ensuring settlement of maritime claims.

### **Criminal Code 2015**

The Criminal Code 2015 (100/2015/QH13) entered into force on the 1<sup>st</sup> of January, 2018. This law provides the entire chapter of XIX to regulate crimes in the field of environment. Accordingly, Article 235, Chapter XIX on Environmental Crimes states:

*“Punishments incurred by a corporate legal entity that commits any of the offences specified in this Article:*

*a) A corporate legal entity that commits this offence in any of the cases specified in Clause 1 of this Article shall be liable to a fine of from VND 1,000,000,000 to VND 5,000,000,000;*

*b) A corporate legal entity that commits this offence in any of the cases specified in Clause 2 of this Article shall be liable to a fine of from VND 5,000,000,000 to VND 10,000,000,000 or has its operation suspended for 06 - 36 months;*

*c) A corporate legal entity that commits this offence in any of the cases specified in Clause 3 of this Article shall be liable to a fine of from VND 500,000,000 to VND 3,000,000,000;*

*d) A corporate legal entity that commits this offence in the case specified in Article 79 hereof shall be permanently shut down;*

*d) The violating corporate legal entity might also be liable to a fine of from VND 50,000,000 to VND 500,000,000, prohibited from operating in certain fields for 01 - 03 years.”*

Article 242. Destruction of aquatic resources

*“A person who violates regulations on protection of aquatic resources in any of the following cases and causes losses to aquatic resources of from VND 100,000,000 to under VND 500,000,000 or extracts a quantity of aquatic products assessed at from VND 50,000,000 to under VND 200,000,000 or previously incurred a civil penalty or has a previous conviction for the same offence which has not been expunged shall be liable to a fine of from VND 50,000,000 to VND 300,000,000 or face a penalty of up to 03 years' community sentence or 06 - 36 months' imprisonment.”*

### **Special legal documents**

Discussing several state regulations on overcoming pollution caused by oil and the liability for compensation for oil spills in Vietnam currently can include dozens of sub-law documents on remedies and compensation for damages caused by oil spills. In this dissertation, the author limits the study to the Civil Code 2015, the Law on Environmental Protection 2014, the Vietnam Maritime Code 2015 and the Criminal Code, Guidelines, Decree and Circular (non-binding) which directly adjusts the issue of the current problem of oil pollution due to oil pollution in Vietnam:

- **Circular No. 2262/TT-MTg on December 29, 1995 - on overcoming the overflow of the Ministry of Science, Technology and Environment**

This is the first legal document to guide the overcoming and handling of oil spills. The content of the Circular has provided very detailed guidelines for overcoming and often causing the oil spill. This Circular was issued in 1995, and it is still valid. This Circular can be considered one of the most valid legal documents today and is presently the only document that entirely regulates the damages caused by oil pollution as well as

the determination of amounts for compensation to overcome the oil spill. The Circular has identified cases considered "Oil Spill", which provides preventive measures and remedies when detecting signs of oil spills procedures for claiming remedies for environmental damage.

Firstly, the Circular has made the following rules of general damages: all individuals and organizations of Vietnamese, foreign nationalities or joint ventures between Vietnam and foreign states polluting the environment owing to the oil spill, all environmental damages are required by law. The fundamental legal basis for claiming environmental damage caused by the oil spill is the Law on Environmental Protection, which references other laws of Vietnam and related international conventions. The Court adjudged the dispute to a Vietnamese Court. Insurance agencies will pay for damages.

Second, the reimbursement of environmental damages due to oil spills has become an international practice, and the amount of reimbursement is calculated for:

- The cost of emergency response
- The compensation for economic losses to organizations or individuals directly affected by the incident
- The compensation for the restoration of environment degraded or destroyed by pollution
- The expenses for surveying, setting up a basis for evaluating economic and environmental damage.

Thirdly, the Circular covers the basic rules and contents of procedures and legal documents for compensation for damages caused by oil spills.

- **Decree No.162/2013/ND-CP replacing the Decree 137 of the Government issued on June 16, 2004 regulating penalties for administrative violations committed within territorial waters, islands and the Continental Shelf of the Socialist Republic of Vietnam**



The main content of this Decree is to provide penalties for violations of regulations on preventing marine pollution caused by ships, including regulations on oil pollution. Individually, as stated in Article 25 of the Circular, the State will impose a fine of between VND 5,000,000 (estimated 216 USD) and VND 10,000,000 (estimated 432 USD) on one of the following acts:

- a) There are no plans for handling oil spills according to regulations;
- b) There is no certificate according to regulations on oil pollution prevention.

A fine of between VND 10,000,000 (estimated 432 USD) and 20,000,000 (estimated 864 USD) shall be imposed for one of the following acts:

- a) Discharging garbage or dregs or sewage mixed with oil and other hazardous substances from ships and boats into the sea in prohibited areas or restricted areas;
- b) Discharging oil, hazardous chemicals, radioactive substances, substances containing hazardous wastes or other harmful substances not according to regulations

- **No. 36/1999/ND-CP Decree on sanctioning administrative violations in the territorial waters and adjacent areas, exclusive economic zones and Continental Shelf of the Socialist Republic of Vietnam**

Through the study of the above regulations, a common message found expressed in most documents is that compensation for oil pollution is a mandatory obligation of all subjects when they cause pollution. Depending on the circumstances, in addition to compensation for damage caused by oil pollution, the person causing the damage shall be sanctioned according to the provisions of law and must have an obligation to clean the environment. In addition to the decrees and circulars of the central government, the localities, depending on their conditions, shall issue a system of adjustment documents on liability for compensation for oil pollution. But due to limited time, the author did not examine these regulations.

### Chapter 4.3: The process of claim in Vietnam

Currently, as specified by the law of Vietnam, the process of compensation for oil pollution is carried out as mentioned by the below steps:

- When there is an action (or oil spill incident) that causes problems of oil pollution, the authorities will engage in the oil spill response, handling and conducting evidence collection to serve the operation, determination and assessment of damages from the incident/action. After the damage valuation, the involved parties (the party causing the pollution and the party damaged by the oil pollution incident) will conduct the negotiation and agreement on the damages claim (compensation and compensation method).
- If the involved parties have success in negotiation on all matters related to compensation for oil pollution compensation, there will be no further problem needed to be solved among involved parties.
- If the negotiation between the parties fails to achieve the agreement, the parties may bring the dispute to solve under either method of settlement at the Arbitration forum or The People's Court system.

However, the process of claiming oil pollution damages in Vietnam, in fact, is very complex and as reported by the Ministry of Natural Resources and Environment, up to 70% of claims for oil pollution have not been compensated or have been compensated inadequately (MONRE, 2015).

In terms of organization, according to the regulation of the law, the Government of the Socialist Republic of Vietnam Unified Management of the Environment (including the marine environment) assigned The Ministry of Natural Resources and Environment perform the function of state management of the environment in Vietnam. Besides, ministries and people's committees at all levels are liable for participating in managing the environment and natural resources. These ministries and agencies shall, according to their duties, power and tasks, cooperate with the Ministry of Natural Resources and Environment in managing the rational use of environmental protection and natural resources. The People's Committees of the provinces and cities under the Central Government shall perform the function of the supervision over the environment in

their localities. The Department of Natural Resources and Environment is responsible to the People's Committees of provinces and cities under the Central Government in controlling environmental protection and natural resources in the locality.

#### Chapter 4.4: Inadequacies in legislation systems of Vietnam on compensation and liability for ship-source oil pollution

Whilst the legal system for environmental protection in Vietnam has been established, the law on pollution prevention and compensation for oil pollution is just regulated in some single documents, inconsistently; there are inconsistencies, conflicts and lack of clarity. Legal documents are only scattered in several laws on environmental pollution prevention and reveal many weaknesses, such as follows:

Firstly, the regulation on compensation for pollution and environmental degradation has been established and stipulated in principle legal documents such as the Vietnam Maritime Code 2015, the Law on Environmental Protection 2014 and the Civil Code 2015. The regulations on compensation for oil pollution, nevertheless, are scattered in the laws and regulations; so that, almost no connection exists between these documents in managing and solving the situation of oil pollution. Especially so far apart from mentioned documents in Section 4.2 of the regulation on oil pollution (national laws, Guidelines and Decree), there is not yet any official and specific legal documents on the regulation of liability for compensation for oil pollution (MONRE, Nguyen, & Nguyen, 2016). The Law on Environmental Protection 2014 also has only one definition of pollution incidents at sea, but no laws or decrees are guiding the implementation of oil pollution issues. Therefore, when there are incidents causing oil pollution, competent agencies and related parties are very confused in applying legal documents; as, the legal basis for requests to sue for damage compensation caused by oil pollution and the determination of damage to be used as a basis to sue for damages mainly relies on the Civil Code 2015.

Secondly, on legislative techniques, legal documents related to the compensation due to oil pollution in Vietnam are, in general, incomplete, detailed and without a general view; which leads to the difficulty in applying to reality. Specifically, the Law on Environmental Protection 2014 is the highest legal document on compensation for

damages caused by pollutants and oil pollutants, but the content of it is also unclear and unresponsive to be required of practice. The scope of adjustment is too limited to cover the rights and obligations of the subject. In particular, the issue of responsibility and compensation for damages caused by environmental pollution, particularly oil pollution, has no specific provisions and regulations on enforcement measures; there is no regulation on the statute of limitations for petitioning for damages caused by oil pollution. The liability of oil spills is not clearly defined for any entity, currently, most only apply civil law to compensation for damages in oil and gas. Right in Circular 2262/1995/MTG, a document with the most advanced regulations guiding the compensation of oil pollution also revealed many gaps to be overcome. Because there is no clear division of responsibilities between agencies, each agency has different procedures for handling claims and there is no agreement. As a result, the process of compensation is slow because the guidance from superiors such as the Prime Minister or the Ministry of Natural Resources and Environment always needs to be asked. Therefore, complicated claims for compensation are even more complicated. Especially when incidents occur in which foreign vessels are involved.

At point b, section 1, part III of the circular, there are provisions: The Court to hear disputes is Vietnam Court. The regulation is general and not clear whether this case is the Provincial Court or the district level and in case the oil spill occurs in many different localities, which local Court will have the Court of Appeal trial rights? Are the provisions of the Civil Code applied in this case? This is a big question that needs to be studied. The Circular also stipulates that each local People's Committee will be in charge of managing and solving the oil spill incidents in the locality; the Department of Science, Technology and Environment is the assisting agency for the Chairman of the local People's Committee where the incident occurred. It also stipulates that the Department of Natural Resources and Environment where the incident occurred is the one who has the right to sue to claim damages due to oil pollution. Like the above analysis, nevertheless, the Circular also left open the regulation on how to deal with disputes over jurisdiction in case the oil spill exceeds the scope of a province.

Third, there is no separate mechanism for compensation for oil pollution and compensation fund for oil pollution (according to the 1992 Civil Liability Convention) in Vietnam. When oil pollution cases transpire, therefore, the settlement of compensation claims leaves both victims and authorities misunderstood, and there is no feasible option because compensation always exceeds the payment possibility of polluters. Despite the Circular No. 2262/1995/TT-MTG of the Minister of Science, Technology and Environment guiding the compensation of oil pollution, the claim for compensation is very difficult not only for the cases between domestic entities, especially for many cases caused by foreign vessels. As for the legal documents that mention the content of the pollution due to oil pollution in Vietnam, there are no detailed regulations on the calculation of losses due to oil pollution. Currently, in the 2015 Law on Environmental Protection and some other documents also mention the calculation of losses but mainly the nature of listing costs but not yet providing a basis for determining the level of damage and methods for damage calculation. Because the legal basis for the calculation of damages is not clear and appropriate, the quantification of losses still faces many obstacles so the process of resolving disputes related to environmental pollution issues, namely, oil pollution, in Vietnam in recent years has encountered many difficulties.

Fourth, there is a lack of guiding documents; the provisions of the law are not specific and clear about the responsibilities of departments leading to overlapping in management and settlement of cases related to oil pollution damage.

In addition to the above-mentioned shortcomings, some shortcomings need to be overcome in the system of Vietnamese legislation on compensation for damages caused by oil pollution:

- The enforcement measures for oil pollution acts (if any) are mostly inclined to administrative orders, the amount of fines is insufficient to deter a major oil spill; The issue of compensation has not been focused.
- The management of oil spill management is still inadequate; handling violations must be based on administrative documents and criminal will be applied in more serious cases. Many cases are not compensated but only for

immediate rescue. Specifically, Song Xanh Co., Ltd was assigned by the Ministry of Natural Resources and Environment to handle the oil spill collected from Duc Tri vessel. The collected oil was buried in the ground. After being discovered, the management agency asked the company to dig the oil and handle it.

- Regulations on compensation levels are too low or insignificant compared to the damage that they cause. Specifically, Singapore's Neptune Aries case hit Cat Lai Port in Ho Chi Minh City in 1994 (Vu, 2004).

Along with marine economic development, Vietnam is facing the risk of sea pollution and serious degradation due to oil spills. Meanwhile, Vietnam is still standing outside of ratifying many international conventions related to environmental protection from maritime transport activities and many international treaties on oil pollution prevention and response to oil spills. The delay in joining these international conventions not only reduces the level of competition of registration of Vietnamese flag ships, but also directly affects the maritime safety and marine environment in Vietnam. This is a huge limitation for Vietnam.

According to the proof in Chapter 4.2, we can see that the maximum amount of compensation imposed on individuals/organizations regulated by Vietnamese law based on Article 235, Chapter XIX of environmental crimes in The Criminal Code 2015 (100/2015/QH13) is:

*“Punishments incurred by a corporate legal entity that commits any of the offences specified in this Article:*

*b) A corporate legal entity that commits this offence in any of the cases specified in Clause 2 of this Article shall be liable to a fine of from VND 5,000,000,000 (estimated 156,200 SDR) to VND 10,000,000,000 (estimated 312,400 SDR) or has its operation suspended for 06 - 36 months;”*

Comparing to the provisions for the highest compensation under the 1992 CLC - 89,770,000 SDR for ships with tonnage of more than 140,000 units and the 1992

FUND - *"203 million SDR for incidents happening on / after November 1, 2003, regardless ship's size"*, it can be said that Vietnam needs amendments and supplements to enforce the law in accordance with the provisions of the international conventions as well as the receipt of the money in accordance with the provisions of the 1992 CLC in order to overcome environmental damage.

CHAPTER 5: ANALYSIS: COMPARISON BETWEEN THE RULES OF THE IOPC FUND CONVENTION AND THE SET OF RULES PRESENTED IN THE NATIONAL LEGISLATION

Based on the above evidence and analysis, we can see that ratifying the 1992 FUND is a necessity when many oil spills and marine accidents have occurred in Vietnam. Moreover, Vietnam is in a favorable position for navigation - the main transportation route at SCS, so the probability of Vietnam facing oil spills is higher.

The author uses the comparative method to highlight the similarities and differences between Vietnamese laws and IOPC Funds' regulations so that the lack can be seen in Vietnamese laws on the provision of compensation due to oil pollution from ships; this comparison is given in Table 5.

Table 5: Comparison between the national laws of Vietnam and regulations of IOPC Funds

Similarities	Differences
<p>Vietnam has established a legal framework for civil liability and compensation regime for damage caused by oil pollution. Existing laws of Vietnam has implemented main provisions in the regulations of the IOPC Funds.</p>	<ul style="list-style-type: none"> <li>- The 1992 CLC mentions about the "Rights of compensation": <i>"unless an action is brought thereunder within three years 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 which caused the damage. Where this incident consists of a series of occurrences, the six year's period shall run from the date of the first such occurrence"</i>. There is no mandatory regulations on the limitation of the time to take action under Vietnamese laws</li> <li>- Fines for environmental pollution due to oil pollution stipulated under Vietnamese</li> </ul>



	<p>laws is too low compared to the provisions of IOPC Funds (as analyzed in chapter 4.4).</p> <ul style="list-style-type: none"> <li>- According to the convention specifying that insurance or other financial security methods in the amount equivalent to the legally total liability for an incident should be maintained. However, under Vietnamese laws, the maintenance of this insurance is not obligated.</li> <li>- Vietnam has not yet established a national fund to overcome the damage caused by oil pollution in accordance with the provisions of the 1992 CLC and IOPC Funds.</li> </ul>
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From the above analysis, it can be readily seen that parts are lacking in national laws of Vietnam compared to the international recognition for compensation for damages caused by oil pollution. The regulations of the IOPC Funds are known as the foundation legal framework for the regime of civil liability and compensation for oil pollution damages. In order to improve and update national laws of Vietnam, the national laws of Vietnam should be enhanced to comply with the international regime and that is an essential step for Vietnam to get ready to join the 1992 FUND. After clarifying the deficiencies in Vietnamese laws, the author uses the SWOT (Strengths - Weaknesses - Opportunities - Threats) methodology and the analysis in the previous chapters to analyse and comprehend Vietnam's ability to join the FUND 1992 Convention and opportunities as well as challenges to Vietnam when it accedes to the convention.

Table 6: Main subjects of SWOT (Strengths - Weaknesses - Opportunities - Threats) in the situation of Vietnam

<b>Strengths</b>	<ul style="list-style-type: none"> <li>- The laws of Vietnam have the available legal framework for compensation for oil pollution.</li> <li>- Vietnamese laws have been gradually making improvements to the existing legal system in order to ratify the 1992 FUND convention; In particular, the Vietnamese laws on compensation for damage caused by oil pollution have updated the provisions of the amount of compensation in a number of articles of the relevant laws to comply with the 1992 CLC (of that Vietnam is a member state)</li> <li>- Two refineries - Dung Quat and Nghi Son refineries help to supply domestic oil (around 70-80% (PETROVIETNAM, 2019)) and help lessen the amount of imported oil which means reducing the number of annual contributions to the Funds if Vietnam ratifies the 1992 FUND convention</li> </ul>	<ul style="list-style-type: none"> <li>- Vietnam will receive more compensation to offset the environmental damage caused by oil pollution</li> <li>- Protection of natural resources and marine ecosystems will be improved.</li> <li>- The 1992 FUND will help Vietnam to minimize the damage and improve the lives of those who are directly affected by oil pollution (For example, farmers affected by the yield due to oil and water pollution).</li> </ul>	<b>Opportunities</b>
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<b>Weaknesses</b>	<ul style="list-style-type: none"> <li>- The laws are still loose and not yet regulated in a comprehensive system. Overlapping laws cause obscurity for victims and authorities.</li> <li>- Vietnam does not have a national compensation fund, according to the 1992 CLC regulations.</li> <li>- There is no connection between legal documents in managing and solving problems of oil pollution</li> <li>- There is no official and specific laws/regulations/ legal documents about the liability for compensation.</li> <li>- Unclear divisions between agencies, separated procedures for each agency still exist; and there are no agreements.</li> </ul>	<b>Threats</b>
	<p>Vietnam is also an importer of oil products, so annual contributions are challenges for which Vietnam needs to prepare. Currently, Vietnam is a developing country, and the financial issue is still a burden for Vietnam in the process of joining the convention.</p>	

Oil pollution is caused by not only marine accidents but also oil spills of unknown origin as well as natural phenomena or human factors. This leads to environmental damage and degradation, seriously affecting the social economy and human life. Hence, overcoming the consequences of oil pollution on the environment is always a tricky problem for the government, as it requires a large amount of money and shared responsibilities with related organizations.

Ratifying the 1992 FUND will bring Vietnam numerous benefits in various aspects (economy, society, protection of natural resources and marine ecosystems). Ratifying the convention will bring economic benefits such as reducing the burden of the government in overcoming the damage caused by oil pollution as well as increasing the recovery of damage to the marine environment. It helps to reduce the economic losses for the industries directly affected by oil pollution and will improve the lives of workers. Through its annual contribution, Vietnam can share and receive shares from the contracting countries of the convention in the responsibilities to prevent and minimize damage caused by oil pollution. Upon ratifying the 1992 convention, Vietnam receives such great benefits as well as responsibilities.

Vietnam has had a legal framework for liability as well as compensation for damages caused by oil pollution since the 1990s, and it has been continuously updated so far, but this legal system contains various shortcomings as analysed in the previous chapters and by the SWOT method. Those drawbacks are issues that Vietnam is facing and needs to overcome for the ratified Convention (the 1992 CLC) to be able to comply with the provisions of the Convention. It is also because of the inadequacies in the system of legal documents in Vietnam that have led to inadequacies in the handling of disputes; those disputes lasted long and did not lead to results. Likewise, many disputes have not yet been compensated for damages. Joining and ratifying the Convention helps to solve the difficulties and challenges for Vietnamese laws and ensures the protection of the marine environment as well as resources and ecosystems, which furthers the development of global trends, international maritime chemistry as well as the role of Vietnam's maritime industry.

## CHAPTER 6: CONCLUSION AND RECOMMENDATION TO IMPROVE REGULATIONS ON COMPENSATION FOR OIL POLLUTION IN VIETNAM

Along with the steady development of the economy, shipping has been gradually developing and has become the most widely-used means of transportation. Also because of active economic development an increase in the number of ships and the need to expand exploitation, especially oil and gas in Southeast Asia exists. Pollution of the marine environment is increasingly serious, directly and indirectly affecting the life of the whole of society. For these reasons, there is a need for the Vietnamese government to deal with oil spills, to minimize economic, environmental and natural resource losses as well as to ensure the quality of life and society.

Since becoming a member of the 1982 Law of the Sea Convention, Vietnam has actively joined many international treaties related to the protection of the marine environment in general and of maritime activities in particular (Marpol 73/78, the CLC 92, STCW 78/95, Bunker 2001), fulfilling its statutory obligations to members of the Convention. We have had a state management system for marine environment from the central to local levels to carry out the inspection, examination and supervision of the implementation of the law on marine environmental protection and dealing with acts of violation. Currently, Vietnam is a member of the 1992 CLC. The mechanism to compensate for losses due to oil pollution in Vietnam has been gradually improved thanks to the participation in the 1992 CLC. However, Vietnam's laws on compensation for oil pollution damage still have many shortcomings and lack update. Besides, it will be challenging to claim full or corresponding compensation for damages occurred, especially for accidents causing severe pollution damage if Vietnam only ratified the CLC 1992 but did not join the 1992 Fund Convention. The waters of Vietnam are located on an important international maritime route with a high number of vessels transporting, leading to an increased risk of marine pollution. Hence, accession to the 1992 Fund Convention is necessary in order for the claim to be sufficient and satisfactory.

Currently, laws of Vietnam have issued a number of documents regulating environmental pollution, oil pollution and compensation for damages caused by oil

pollution. Legal documents in laws related to this issue are still inadequate and inconsistent, so they often encounter problems in dealing with, primarily the responsibility of the source of oil pollution, who is responsible for compensation for damages. Consequently, in order to promote the Vietnamese legal system for the prevention and control of oil pollution at sea from ships in parallel with the formulation of a roadmap to accede to critical international conventions, Vietnam needs to build specific laws to regulate oil pollution, to clearly define polluters, so that they can more easily carry out their responsibilities.

Some recommendations to improve the laws of Vietnam on compensation for oil pollution:

- Vietnamese laws need to issue legal documents with specific guidelines guiding the implementation of damage assessment; provisions on compulsory insurance for entities engaged in maritime and petroleum activities;
- Vietnamese laws need to be updated to comply with the 1992 CLC convention to which Vietnam is a contracting member.
- Besides, Vietnam should focus on investing in the legislative and law enforcement team and the law enforcement force comprehensive enough in the civil field in general and international maritime in particular to ensure that the process of compensation for damages is timely and effective. Vietnamese law needs to enhance the overall compensation for oil pollution.
- Ratifying the 1992 FUND is the necessity for receiving higher compensation for damage caused by oil pollution and recovering from the damage, protecting the environment and ecosystem as well as keeping the sustainable development of the economy and lives.

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