THE CARRIAGE OF OIL BY SEA AND APPLICABLE CIVIL LIABILITY REGIME*

Abstract
The focus of this paper was to survey relevant literatures in carriage of goods contract and oil pollution response of sea going vessels. It also discussed the liability and compensation regime available at International law, including voluntary schemes by tanker owners. The objective of the paper was to establish how oil is carried by sea and to show how states and tanker owners are to respond in cases of escape of oil from tanker or tanker's disaster in order to set limit of liability of tanker owners, jurisdiction and time to bring an action among other things. It is expected that timely response in cases of oil leakage, quick dispensation of litigation and prompt, adequate compensation and remediation works on the sea will be a win for all parties and riparian owners of the sea shores and coastal environment.

Keyword: Civil Liability, Carriage of Oil by Sea, Hague Rules, Applicable Laws

1. Introduction

The report on International seaborne trade 80% increased between 2012 – 2013 by 4.3% with a total tons of 9 billion in 2012 for the first time with crude oil trade accounting for $^1/_3$ of the total[1].
The report identified some evolving trend affecting International sea trade which includes:
i. The continued negative effect of the 2008/2009 crisis on global demand, finance and trade;
ii. Structural shifts in global production patterns;
iii. Changes in comparative advantages and mineral resources endowments, in particular oil and gas;
iv. Rise of the South and shift of economic influence away from traditional centres growth.
v. Demographics, with ageing populations in advanced economics and fast – growing populations in developing regions and with related implications for global production and consumption patterns;
vi. Arrival of container megaships and other transport – related technological advances;
vii. Climate change and natural hazards energy. Costs and environmental sustainability[2].

There were legal and regulatory development issues like the coming into effect of the 2006 maritime labour convention in 20th August 2013; the 2002 Athens convention relating to the carriage of passengers and their luggage by sea on 23rd April 2014 and many other protocols including the implementation of the 2004 International convention for the control and management of ship's ballast water and sediments[3]. The reported also noted the continued declines of global world trade – volume from 2011 – 2012, averaging 1.8 percent because of falling prices of commodities[4] include crude oil. Crude oil trade is adversely affected by high oil price and new environmentally friendly technologies. A further comparison between petroleum products and gas showed that petroleum products fared better than gas because of the minimum additions of liquefaction installations which constrained the volume of gas that could be taken. Commenting generally on carriage of oil by sea or global energy map is being redrawn as the United States of America, the worlds' single largest consumer of crude oil is surging in shale oil gas production and aims to be a net exporter of gas in 2020 and overtake Saudi Arabia and became nearly self – sufficient in energy by 2035[5].

In 2012, crude oil shipments on board tankers was 1.78 billion tons of the 55.3million barrels per day (bpd)with a brighter outlook for LNG trade because of surging production and export in the United States of America; new gas finds worldwide including Cyprus, Israel, Mozambique and the United Republic of Tanzania; China's strategic commitment to promote gas use and sustained Asia LNG imports; the decline in nuclear power use, and the attractiveness of gas as a 'greener' alternative to other fossil fuels[6] . This is because capacity building and infrastructure supporting the gathering and utilization of gas have progressed more rapidly unabated to the

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[1]Mukhisa Kituyi (secretary General of UNCTAD) in his Foreword to the UNCTAD Review of maritime Transport 2013 at PXi
[2] UNCTAD Review of maritime Transport 2013 P25-30 for opportunities and trends affecting international shipping.
[3] Mukhisa Kituyi (n 2) P XIV, P. 104-128
[4] ibid p. 4-6
[5] ibid p. 6-
[6] ibid p. 15-18

final investment decision stages (FID) in 2012[7]. Currently, the total oil tankers fleet 491 with only 14% being 15 years or older[8]. The world fleet is valued at 809 billion dollars with Greece, Japan, China, Germany and Republic of Korea accounting for 53% of the world's tonnage and China alone has over 5,313 ocean going ships[9]. So are their five largest States of flags of registration as at 2013 in terms of DWT which are panama 215%; Liberia 12.2% ; Marshall Islands 8.6%; Hong Kong and China has 8% each Singapore 5.5%[10]. In all, it is good to measure the through out of ports by volume of goods and time goods spent in the ports, ship waiting time, berth occupancy rate, cargo dwell time and cargo – crane moves per hour[11] because it directly or indirectly affects the carriage of goods (oil) by sea and cost of operation and the goods themselves on the final consumers.

2. The UNCTAD Maritime Review of 2013

The UNCTAD maritime review of 2013 covers both oil tanker, dry bulk and general carriers in International trade transport of goods but we have highlighted few pages of the report that applied to carriage of oil by sea. The most current sources on the number of fleets, operator, ownership, fright rate and cost of carriage of goods include oil by sea. It included report on legal and regulatory issues in the carriage of oil by sea in order to prevent pollution and pointed to the fact that trade in LNG and other petroleum products is expected to deepen as 'greener' source of energy because of environmental concern which will force down the consistently falling prices of crude oil in the International market.

3. The Convention for the Jurisdiction of Certain Rules of Law Relating to Bills of Lading (Hague) Rules[12]

The convention imposes rights, responsibilities and liabilities on a carrier once goods are loaded on board to when they are discharged[13]. The meaning of carrier includes the owners as the charterer who ensures into a contract of carriage with a shipper, while goods include goods, waves, merchandise and articles of every kind whatsoever except live animals and cargo which by the contract of carriage is stated as being carried on deck[14] a ship. A ship means any vessel used for the carriage of goods by sea[15]. The Hague Rules applies to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea including any bill of lading or nay similar document as aforesaid issued under or merchant to a charity party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same[16]. Ascribing ordinary meaning to the word as they appear in the said Article 1(b) of the Hague Rules one may arrive at the conclusion that:

A. That Hague Rules only applied to contract covered by a bill of lading or any similar document of title.
B. A charter party evidence by a bill of lading regulates the relationship between the carrier and the holder of such bill of lading, and
C. Any carriage of goods agreement concluded by the parties which is not contrary to public policy made in a non-negotiable document.
D. Oral contract of carriage of goods where it was intended that a bill of lading will be issued.

But the Hague/Hague Visby Rules do not apply to the following:

I. Contract of carriage of live animals;
II. Contracts of carriage of deck cargo which is carried on deck and 'is stated as being so carried on deck'[17];
III. Transportation by charter party being a charter party being a contract of hire rather than of carriage, unless a bill of lading has been issued and regulate relations between the carrier and holder[18];
IV. Non-negotiable receipts (way bills) not in the ordinary course of trade and

[7]Some 12 liquefaction projects are under construction globally, including 5 in Australia, papua, New Guinea and Colombia has 20 projects that have reached FID stages note 1.P 18

[8] World fleet by principle vessel types, 1980-2013, in note 1. P 36

[9] Mukhisa Kituyi (n 2) P 42

[10] ibid p. 53-55

[11]ibid p. 100.

[12] International Convention for the Unification of Certain Rules of Law relating to Bills of Lading ("Hague Rules") done in Brussels, 25 August 1924.

[13] Article 1(e) and 11 of the Hague Rules.

[14] Article 1 (a) (c) of the Hague Rules.

[15] Article 1 (d) of the Hague Rules.

[16] Article 1 (b) of the Hague Rules.

[17] *Pyrene Co. v. Scindia Steam Navigation Co*. (1954) 2 QB. 402 at pp. 419-420- where Delvin J held- in my jugdement, whatever a constract of carriage is concluded, and it is contemplated that a bill of lading will, in due course, be issued in respect of it, that contract is from this creation 'covered' buy a bill of loading and is therefore from its inception a contract of carriage within the meaning of the Rules and to which the rules apply. This decision has been followed by the Canadian Supreme court in *Anticosti Shipping Co. v. St. Amand* (1959) SCR 372; 1959 AMC 15260 1528.

[18] Article 1 (b)

V. Non-negotiable receipts (way bills) in coasting trade under national legislation.

The agreements carriers may enter with shippers can be pre-loading subsequent to, discharge from ship, surrender of responsibilities, liabilities rights and immunities whether in whole or part provided that such surrender is inserted in a bill of lading or any lawful provision in any agreement[19]. And limitation of liability of owners of sea-going vessels shall not be affected by any statute for the time being in force[20] with monetary unit of the convention being gold but contracting state whose currency is not found sterling to translate the value into their national currency[21]. The Hague Rules as amended by the Hague/Visby rules of 1968 saw a further amended in 1979[22].The 1979 protocol changed the basic unit of account Hague/Visby rules 1968 from point care gold francs to special drawing right (Visby S.D.R. protocol). The Hague/Visby Rules is one single document but a party to the protocol which is not a party to the convention shall not apply the provision of the convention to be of lading issued by the party. The contract of carriage is not the bill lading but consist in the advertisements, the booking note, the freight tariff all taking together[23]. It is between the carrier and shipper. The application of the Hague/Hague/Visby rules could take a more fundamental twist is we consider the general principle of Private international law that the foreign law of the contract where it is expressly or impliedly adopted by contracting parties to govern their contract or it is the law that has the most 'real connection' which a local court is called to apply

i. If the foreign law is substantive and not procedural
ii. If the foreign law does not violate public policy or any mandatory law or forum, and
iii. If it want not amount to evasion of local law and jurisdiction or forum shipping[24].

But by far, the Hamburg Rules[25] is a radicalisation of contract of carriage of goods as it tries to remedy the defect in application of Hague and Hague/Visby Rules.

Main Feature of the Convention

i. The Hamburg Rules apply to all contract of carriage of good by sea[26] and not just carriage covered by bill of lading or similar document of title.
ii. When the port of loading or discharged is located in a contracting state[27]
iii. When one optional port of discharge is a contracting State[28]; and
iv. When a bill of lading is issue[29] or
v. Where the Hamburg Rules incorporated by reference

It is doubtful whether the mere incorporation I an agreement that an international convention apply will give the convention the force of law in Nigeria in view of the provision of section 12 of the 1999 constitution (as amended).

Again, the application of the law of contract or one that as the most real connection is not easy to find in conflict of law. Beside, agreement of parties to a contract cannot confer jurisdiction on a local government if by local statute establishing it, it does not have such judicial powers. Under Hague/Visby Rules carrier liability for loss or damage is 66667970, 00 dollars or 2 SDRs per kilo gram i.e. 1.32 per pounds. While the Hamburg Rules set the limit of 835SDRs per package i.e. 210.00 or 2, 5 SDRs per kilogram i.e. 1.65 dollars per pounds 35 whichever is higher. Article 17 of the Hamburg Rules places liability on the carrier for loss, damage or delay to good during the period of carriage on less it can show that any of the event listed in article 17 (3) (a-p) of the convention add occurred.

[19]W. Tetley, (Q.C) Application of the Rules Generally P. 13-14, http://tetley.law mcgall. Ca/visited 7/11/2014 at 10:00 am. See also Article Vii and Article V and Vi
[20] Article Viii
[21] Article Ix
[22] The International Convention for the Unification of Certain Rules of Law relating to Bills of Lading signed at Brussels, August 25, 1924 and came into force on June 2, 1931. The Hague /Visby Rules is the Protocol to amend the International Convention for the relating to Bills of lading adopted in Brussels, February 23, 1968 and entered further amended by a protocol.
[23] W. Tetley (n 20) p. 11, see also Article 6 of the Visby Rules.
[24] ibid P. 24.
[25] United Nations Convention on the Contracts for the International Carriage of Goods done at Hamburg on March 30, 1978 and came into force November 1, 1992.
[26] Article 2 (1).
[27] Article 2 (1) (a – b).
[28] Article 2(1) (c).
[29] Article 2(1) (d) – compare to article co (a) of Hague/Visby Rules.

The Obligation of the Shipper to the Carrier

The obligation of the shipper to the carrier and liability is provided for in article 27, -24 the shipper in a contract of carriage of goods to the carriage of goods must

i. Deliver the goods to the carrier for carriage;
ii. Properly and carefully perform any terms contained in his agreement with the carrier in hire with article 13, paragraph 21.
iii. Properly, package goods meant for shipping to avoid damage to it;
iv. Cooperate with carrier in providing correct, timely and accurate information and instruction required for the proper handling of the goods on board.

Article 30 provides for the basis of shippers liability to the carrier which will arise when:
The loss or damage is as a result of a shipper is breach of any of the provisions of the convention but his liability is only to the part attribution to his fault. In the event of any loss, damage delay or any wrong or breach of the convention or agreement, the time to commence an action as stated in article 62 is 2 years which is reckoned the carrier had delivered the goods or where no goods was delivered or only a part was delivered, the last day for them. Delivery under the contract but the time may be extended as provided under Article 63 of the convention Jurisdiction Article 66 provides to the effect that unless the contract contains an agreement of court to commence an actions a party may under this convention against a carrier in a court of competent jurisdiction situate in:

i. The domicile of the carrier;
ii. The place of receipt of goods agreed in the carriage
iii. The place of delivery of goods in the contract
iv. Either ports of in initial loading or final discharge of goods from ship,

There is also provision for arbitration if there is a clause inserted in the agreement/claim by the carrier and the place of arbitration little set above is provided for in Article 75 (a) (a) and \(b) (i – iv) As a protocol upon coming into force, signatory states are to denounce the Hague /Vis by Rules

4. International Safety Management Code

This means the international management code for safe operation of ships and for pollution prevention adopted by the organization by Resolution A. 741 (18) 36 and applies to oil tankers and offshore drilling limits of 500 gross tonnage and more among other Cargo and passengers ships. The main goal of the code is to provide international standard for the safe management and operation of the ships and pollution prevention others include:

i. Provide safe practice, operation and working environment on the ship.
ii. Identify risks to ship, personnel and environment and provide safeguard;
iii. Continuously improve safety management skills of personnel abroad ship in case of emergency and environment protection[30].

For the code to function, it requires every company to have

i. A safety and environmental- protection policy;
ii. Instructions and procedure for safe operation of ship in line with international and flag state legislature.
iii. Defined level of authority and line of communication;
iv. Procedures for reporting an incident;
v. Procedures to prepare for and respond to emergency situation; and
vi. Procedures for internal audits and management reviews[31].

The master's responsibility and Authority as provided in Article 5.1 (1-5) include to:

i. Implement the safety and environmental- protection policy of the company
ii. Motivating the crew in the observation of that policy.
iii. Issue appropriate orders and instructions in a clear and simple language;
iv. Ensuring that specified requirements are observed; and
v. Ensure periodic review of the safety management system, report deficiencies to the appropriate/ designated person.

The company in order to achieve safety on board shall ensure that the master of a ship is one who is properly qualified for command; fully conversant with the company's safety management system, and personnel must be

[30] Article 1.2.2 (1 – 3)
[31] Article 1.4 (1-6) of the ISM code

such that give necessary support to the master to perform his duties[32]. The company is to regularly carry out emergency drills to keep personnel on red alert and emergency preparedness in case of hazards, accident etc to the ship[33]. In all, one can say that the sin code if followed is a cost effective way for carriers to ensure safety of lives and the ship itself and pollution damages in the case of actual accident, minimum the damage and loss because of the safeguards measures in place and conversant to the ship master and crew. International convention on oil pollution preparedness response and co-operation , the parties ton this convention are very mindful of the needs to comply with SOLAS 1914, MARPOL 73-78, the CLC 1969, 1971 FUND and the general principle of polluters pays in international law, to take all appropriate measures whether individually or jointly in compliance with the provision of this convention to prepare and promptly respond to an oil pollution incidents oil pollution incidents[34]from ships to which this convention applies to. The convention applies to any vessels of any types whatsoever operating in the marine environment including hydrofoil boats, air-cushion vehicles, submersibles, and floating craft of any types with oil includes crude oil, fuel oil sludge, oil refuse and refund product[35].

Article 3 requires that ships must have on board oil pollution emergency plan so s with off-shoves units or sea ports and oil handlings facilities. The convention like the LSM code set procedures and designated persons and whore reports of any discharge, leaking or oil pollution may be made to without delay.

i. In case of a ship to the nearest state;
ii. In case of offshore units to coastal state with jurisdiction ;
iii. At sea, sea ports or oil handling facilities to the competent national authority to nearest coastal state; or seek the help of a pilots of a civil aircraft to do so to the national authority or nearest coastal state.

And any person in receipts of the oil pollution report shall take the following steps:

i. Determine whether or not it is an oil pollution;
ii. Assess the extent and most likely consequences of the oil pollution incidents
iii. Without delay inform all states whose interest would be affected and
iv. Forward a detailed assessment together with the steps and actions he intends to takes to arrest incident.
v. Where the incident is of a serious types, directly inform the organization and appropriate regional organization of the nature/ and extent of the intended[36.]

The convention mandated national and regional systems to respond promptly and effectively to oil pollution[37] by putting in place minimum oil spill combating equipment commensurate with the risk involved[38]at the point of contract and request assistance in training of personnel and containing the pollution if above its capabilities and contracting parties agree to support such state with advisory, technical support and equipment for the purpose of co-operating to fight the oil pollution[39]. In additions, a party shall expeditiously facilitate the entry and departure of personnel, cargoes, and materials and equipment required to be used and used in containing the oil pollution incidents[40]. In order to achieve the objectives of this convention, parties are to co-operate in Research and development technical and personnel training, promote bilateral and multi-lateral co-operate in preparedness and response[41]. It should be noted that unless parties in a bilateral or unilateral excluded financial cost for assistance, clearing up pollution or was done by the other. Party's initiative, it is to be borne by the requesting state[42]. The implication is that the requirement to cooperation to prepare and respond to oil pollution incident is not a moral burden of assistant as a good Samaritan who saw a harm and tries to prevent or reduce effect. The truth is that it is contractual and consideration is waiting to be serviced by the party who expressly requested the other's help. One can conclude that, the annex which was made as part of the convention was to exploit Africa and the least development countries who are technologically backward and economical unstable to purchase the requisites technology to clean up oil pollution occurring off their cost by themselves. The countries are push to the watt to choose paying for the cleaning up exercise or suffer the debilitating effect of oil pollution. And this is not fair at all.

[32] Article 6.1 (1-3)
[33] Article 8 of ISM code
[34] International Convention on Oil Pollution Preparedness, Response and Co-operation, done at London, November 30, 1990, Article 1 (1).
[35] Article 2(3)(1)
[36] Article 5(1) (a – c), (4).
[37] Article 6 (1)
[38] Article 6(2) (a).
[39] Article 7 (1-2); 12 (1) (d) (i-ii).
[40] Article 7 (3) (a – b).
[41] See Article 8, 9, and 10.
[42] Annex 1 to the convention.

5. Civil Liability Compensation Regimes[43]

About half of global oil trade and supply are carried by ship on sea and make oil pollution of sea a present concern as ever before, even though, the incident of frequent oil spill has reduced, it has not totally gone away. The essence is to compensate victims of oil pollution damage from tanker by contracting state through a layered system which supplement liability of vessel owner by a fund made available and financed by oil cargo receiving contracting state and the compensation is to a victim regardless of the flag of the tanker, owners nationality and placed the spill occurred[44]. But the fund provides for a second tier of compensation in respect of demurrage excess of the liability available under the 1969 CLCV with the coming into effect of the 1992 CLC, if all state parties have domesticated the 1969 CLC it would have ceased to be the law on the subject but unfortunately, not all have done so, the 1969 CLC and 1992 CLC co-exist side by side to regulate civil liability of oil pollution but the 1992 fund is the extant law not the 1971 fund. In fact, oil is carried on very large vessels in the advantage of economies of scale. So, I, leave you to imagine the catastrophic effect of any possible oil pollution incident on the sea environment like the Torrey Canyon disaster in 1967, the civil liability convention of 1967, the civil liability convention of 1971 were negotiated. Today the current laws on civil liability in international oil pollution are the 1992 CLC and the 1992 Fund Convention and the 2003 Protocol to the Fund. Oil pollution of the sea can be ship- source oil pollution or oil tanker pollution. The former results activities of oil bunkers, leaks from fuel tank or cargo ship etc. But we are more interested in the oil pollution from tankers. Also, there is a supplementary fund protocol of 2003 which provides an optional third tier compensation for contracting state to the 1992 CLC and fund which provides a maximum aggregate amount 1.e. 1157. 2 million dollars.

Summary of Amount of Compensation for Oil Pollution in the Respective Convention

Tankers Size (gt)	1969CLC As amended	1992CLC (post 2003)	1992 fund Conv. (post 2003)	2003 supp. Fund protocol
5,000	0,665m	4,510	203	750
10,000	1,33m	7,665	203	750
50,000	6,65m	32,905	203	750
1000,000	13,3m	64,455	203	750
140,000	14.0m	89,770	203	750
150,000	14.0m	89,770	203	750
200,000	14.0m	89,770	203	750
Contracting states	37	124	105	27

Table – was adopted from note 43. P. 13 as sourced from information on contracting states based on IMO (www.imo.org): SDR exchange rate based on (wwww.imf.org). Further, both the 1969 CLC and 1992 CLC regulate first tier compensation and places strict liability on the registered ship owner for pollination damage. Again, all claims for compensation must be channeled against the ship owner[45]. It then set a number of exceptions and defences. They both fix a monetary cap limiting the liability and defined the instances in which the ship owner may lose his right to limit liability. Also, there is a requirement for ship owners to maintain a compulsory insurance cover if carrying more than 2, 0000 tons of oil and the terms of the insurance policy should contain a right of direct action against the insurer by the claimant and issuance of certificate to that effect[46]. The time to bring an action is within 3 years and the period starts counting when the damage occurred[47]. Furthermore, if one considered the geographical scope of the convention, it is that, the convention to cover pollution damage caused in the EFZ of the state party[48].

Fund convention of 1992 contributed by contracting state including government authorities (if it state owned companies or private companies who receive more than 150,000 metric tons of 'contributing oil' in any calendar year[49]. The fund established a second-tier compensation for pollution damage[50] suffered by contracting states. However, the fund is available for states who have signed the 1992 CLC. The limit of payment before November 1, 2003 under the fund including the actual amount paid by the ship owner is 135 million SDR but

[43] UNCTAD liability and compensation or ship-source oil pollution: An overview of the international legal framework for oil pollution damage from tankers; Studies in Transport Law and Policy – 2012 No p. 1.
[44] Article III (1) of CLC 1969.
[45] Article iii (1) of 1969 CLC; Article.
[46] Article vii (1) & (8).
[47] Article viii.
[48] Article 1(6) of 1992 CLC.
[49] Article x (1).
[50] Pollution damage covers the cost of cleanup operations and property damage as well as consequential loss and pure economic loss for example, fishermen whose net and fishing equipment has become polluted and loss of income are entitled to compensation including hotel owners by the beach or sea side who lost customers are entitled to loss of tourism income.

date, the fund pays 203SDR and this is irrespective of the ship sea. The situation that arises where the contracting state to the find receives more than 600 million tons of oil per annum, the maximum amount will be in the region of 300. 74 million SDR.

It is worthy of note that the fund being a second tier pays compensation only where the damage exceeds the limit of the ship owners liability under the CLC 1992, or the ship owner is financially in capable of meeting his full obligation under the CLC 1992 and the insurance is insufficient to cover the loss and pay valid claims. The fund does not pay compensation if the damage occurred in a state that was not a member of the 1992 fund, it also pays if the pollution resulted from an act of war or spill from a warship; or the claimant cannot proved that the damage resulted from an incident involving two or more sea going vessel or sea-born craft. It is doubtful giving the Mexican supreme court judgment whether an off shore oil which collides with an oil carrying vessels will entitle a claimant for compensation International oil pollution compensation supplementary fund (established by the protocol of 2003 to the fund convention of 1992 and carriage came into force on March and is a third tier of compensation to carry victim suffering pollution damage if the person is unable to get full compensation payment under fund convention of 1992 or the amount in the claim exceeds the monetary cap unit[51]in respect of any one incidence pollution damage[52]. The fund is optional and is open to any states which are members to the 1992 fund. The maximum amount it can pay is 750 million SDR including the amount paid under the 1992 fund convention and its geographical scope covers the territorial sea, EEZ of the contracting state. The supplementary fund is as stated in the 1992 fund. In the civil liability convention regimes discussed, one carefully excluded the 1971 fund convention, the TOVALOP and CRISTAL because, except for history, they no longer form part of the extant international law in oil pollution damage. Luckily, Nigeria is among the 105 contracting states to the 1992 CLC and 1992 FC but not a member of the supplementary fund of 2003 and CLC 1969

It is noted again that the demise of the TOVALOP and CRISTAL saw the emergency of Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 And The Tanker Oil Pollution Indemnification Agreement (TOPIA), 2006 and both came into force on February 20, 2006 as introduced by the international Group of Protection and Indemnity (P & I) club which consist of 13 underwriting member clubs, insurers and provided liability cover for over 90% of ocean going vessels of high tonnage[53]. The two schemes do not affect the way the CLC and funds work but provide indemnification mechanism for the benefit of the IOPC funds to reallocate liability for compensation between the industries. The way the scheme work is explained, 'under the STOPIA 2006, the limitation amount available to a ship owner under the 1992 CLC for tanker up to 29,548 gross tones is voluntarily raised to 20 million SDR percent incident. Thus, while the 1992 IOPC fund and the supplementary IOPC fund provides compensation to claimants as envisaged by the 1992 fund convention and the 2003 supplementary fund protocol, respectively, the funds will, under STOPIA 2006, be indemnified by the ship owner for the difference between the vessel's limit of liability under the 1992 CLC and 20 million SDR. TOPIA 2006 applies in respect of claims covered by the 2003 supplementary fund protocol, i.e relating to oil pollution damage in the territory or EEZ of contracting states to the 2003 supplementary fund protocol while the supplementary IOPC fund compensates claimants as envisaged by the protocol, ship owners bound to TOPIA agree to reimburse the supplementary IOPC fund for 50% of any compensation that is paid out[54].

[51] www.gard.no/.../insight accessed October 16, 2022 see also, 66 Article 4(4) of fund convention 1992.
[52] Article iv (1)
[53] The International group (P & I) clubs include – American steamship owners mutual protection and Indemnity Association Inc.; Assurance foreign skuld-i.e skuld mutual protection and indemnity Association (Bermuda) Ltd; Gard P & I (Bermuda) Ltd, The Britannia steamship Insurance Association Ltd; The Japan ship mutual protection and indemnity Associations; the London steam-ship owners mutual insurance Association Ltd; the North of England protecting & indemnity Association Ltd; The ship owners mutual protection and indemnity Association (Luxembourg); the standard club ltd; consist of the standard club of Europe ltd and the standard club of Asia; The steamship mutual underwriting Association (Bermuda) urban Foreign/The Swedish Club, United Kingdom mutual steam ship Assurance Association (Bermuda) Ltd and United Kingdom mutual Steamship Assurance Association (Europe) Ltd and The west of England ship owners mutual insurance Association (Luxembourg).
[54] (n 44) p 18-19.