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The International Oil Pollution Compensation Fund as a Complementary Mechanism to the 1969 Civil Liability Convention

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Abstract:

The international legal framework for addressing marine pollution aims to ensure both accountability and fair compensation for affected parties. It is based on two complementary mechanisms: the 1969 Civil Liability for Oil Pollution Damage Convention, which holds shipowners strictly liable for pollution damage, and the 1971 International Fund for Compensation for Oil Pollution Damage, which provides additional compensation when the Civil Liability Convention is insufficient. Together, these mechanisms promote responsibility, protect victims, and reinforce preventive measures to reduce marine pollution.

Keywords: Civil Liability-Marine pollution-Hydrocarbons- Compensation fund.

Introduction:

The sinking of the Torrey Canyon in 1967, in the absence of appropriate legal regulations, triggered a strong response from the international community, highlighting the need for mechanisms capable of addressing disasters of this scale. These mechanisms were subsequently embodied in two international agreements concerning liability and compensation for oil pollution damage.

Following extensive consultation among states, the 1969 Civil Liability for Oil Pollution Damage Convention was adopted on November 29, 1969. This convention established a new framework for international liability, designed to be objective and to ensure fair

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compensation for parties affected by hydrocarbon pollution. Subsequently, a project for an international compensation fund was developed, culminating in the signing of the 1971 International Fund for Compensation for Oil Pollution Damage Convention in Brussels on December 18, 1971.

This Fund was created as a complementary mechanism to the 1969 Liability Convention, ensuring that affected parties receive adequate compensation when the liability convention alone is insufficient. The founding agreement of the Fund detailed its organizational structure, responsibilities, conditions for intervention, funding methods, and cases of exemption from obligations.

This study focuses on the 1971 International Fund for Compensation for Oil Pollution Damage and its amendments under the 1992 Protocol. The central research question guiding this study is: What are the conditions and circumstances for the Fund's intervention, its methods of financing, and the cases in which it may be exempted from its obligations?

To answer this question, we adopted an analytical approach, examining the texts of the conventions and their amendment protocols, alongside a historical approach to trace the milestones in the development of the Fund's operations.

The study is divided into two main sections. The first section, titled "The Establishment of the Compensation Fund and Its Conditions," examines the creation of the Fund, including the voluntary arrangements implemented prior to its formal entry into force, followed by a discussion of the conditions required for the Fund's intervention. The second section addresses the Fund's operational aspects: the first part explores the circumstances under which the Fund intervenes, while the second part explains its methods of financing.

1- The Establishment of the Compensation Fund and Conditions for Its Intervention

International funds are those funds whose establishment is stipulated by an international agreement. Thus, they are neither private funds within a single state nor public funds created by the government

of one of the states thru national legislation. Rather, they are funds established by an international agreement, which organizes the provisions of that fund, defines its functions, clarifies its scope of work, and specifies the entity responsible for its management and supervision(500 صفحة، 2020 ،الكعبي).To study the compensation fund for pollution damage by hydrocarbons, we will first address its establishment in the first section, and then in the second section, we will discuss the conditions that must be met for this fund to intervene.

1.1- The establishment of the fund

To examine the establishment of the Fund, itis essential to review the mostsignificantdisastersthat have affected the marine environment, whichprompted the initial consideration of creating a legalframework to protectboth the environment and thoseimpacted by such incidents. Additionally, attention must begiven to the voluntary compensation schemesthatwereimplemented to fulfill the Fund'sroleprior to the commencement of its official activities.

1.1.1- The Compensation Fund as a Supplementary Mechanism to the 1969 Civil Liability Convention

The massive expansion of hydrocarbon transportation by sea and the race for giant oil tankers have made maritime accidents more frequent and more devastating. Since the sinking of the Torrey Canyon in 1967 (Helene &olivier , 1995, p. 95), there has been a need to develop international standards for civil liability for oil pollution, with the aim of ensuring prompt compensation for oil spill victims. Clearly, this goal cannot be achieved thru complex rules of jurisdictional conflicts and conflicts of laws. Therefore, it was necessary to negotiate a unified system of civil liability within the International Maritime Organization (IMO). After lengthy discussions within the body, the first convention on civil liability for oil pollution damage was adopted in 1969 (Mahjoub, 2009, p. 01).

During the lectures held in 1969 it was observed that the compensation system thru the Civil Liability Convention was insufficient, as it did not provide comprehensive compensation for pollution victims. Therefore, the necessity of establishing a system that grants supplementary compensation to the compensation provided in the Civil Liability Convention was recognized, to ensure compensation that satisfies the affected parties while simultaneously

exempting the shipowner from an additional financial obligation imposed by the Convention(173 صفحة ،2013/2012 ،بلقاسم). Consequently, a committee was appointed with the task of studying and preparing an agreement concerned with the establishment of an international fund specialized in compensating and redressing the victims of such disasters.

The International Maritime Organization (IMO) also called for the establishment of owner liability on an absolute objective basis, shared with the liability of cargo interests in the form of a fund. Thus, the Brussels Conference for the establishment of the International Oil Pollution Compensation Fund (F.I.P.O.L) was convened under the Brussels Convention concluded on December 18, 1971. This convention aims to use the proceeds of this fund to cover the costs of cleaning and removing the effects of oil pollution and compensating for its damages. Article 4 of the convention states: "The fund shall pay compensation to any person who suffers damage caused by pollution and cannot obtain full and adequate compensation under the 1969 Civil Liability Convention, including reasonable measures taken to reduce the minimum"(280 صفحة ،2015 ،بوفلجة).

Thus, the FIPOL Fund operates within the framework of two international agreements that establish a legal system for damages caused by oil spills or leaks from loaded tankers, namely the 1969 International Convention on Civil Liability and the 1971 International Convention establishing the Fund as a financing agreement. The Civil Liability Convention governs the liability of shipowners for pollution damage caused by oil, establishing the principle of strict liability for shipowners and setting up a system for mandatory insurance. Typically, the shipowner has the right to limit their liability to an amount related to the ship's tonnage (hydrocarbures, 1992, p. 01).

Here comes the role of the 1971 Compensation Fund Convention, which complements the Civil Liability Convention thru an additional compensation plan by establishing a fund to manage the compensation scheme (hydrocarbures, 1992, p. 01).

In order to enable victims to receive fair compensation for damages caused by ship pollution, the international convention rules governing the operation of the International Oil Pollution

Compensation Fund (FIPOL) have made it an independent institution. It enjoys an independent administrative body that manages the fund's affairs to achieve its intended objectives. Additionally, it has an independent financial status, which consists of financial contributions paid by private entities engaged in maritime transport and companies belonging to member states that transport shipments with marine pollution effects, constituting its main revenue. Furthermore, the cases in which it intervenes are predetermined(بن شريف، 2014، صفحة 62).

Article 2 of the agreement establishing the fund, in its second paragraph, stipulates that the contracting states must recognize the fund as a legal entity, which, under the laws of those states, can assume rights and obligations and be a party to any lawsuit brought before the courts of those states. They must also recognize the fund's director as the legal representative of the fund (iopcfunds.org, 1971, p. 29).

However, the latter did not come into effect until 1978, and during this period, voluntary compensation plans were put in place to compensate the victims. These plans are represented by Cristal and Tovalop, which replace the agreements.

1.1.2- Voluntary Compensation Plans TOVALOP and CRISTAL

Where we find the TOVALOP plan (المقدادي، 2015، صفحة 122),which is an agreement signed on 07/01/1969, is a voluntary compensation plan designed at the initiative of oil companies facing the slow start of the agreement's implementation. Initially, it aimed to compensate only countries for reasonable expenses to combat pollution. After the Brussels Convention of 1971 came into force in 1978, TOVALOP was redesigned to ensure system consistency, where compensation is paid to individuals and no longer just to countries (Helene &olivier , 1995, pp. 102-104).

This agreement, when it was concluded, included seven companies representing more than half of the global petroleum fleet. It came as a temporary solution until the International Convention on Civil Liability came into force. However, the application of this agreement continued beyond that date. This agreement is broader in scope than the 1969 Civil Liability Convention, which limited its application to the owner of the oil-carrying ship. In contrast, the

TOVALOP agreement extended the guaranty to include the charterer of the ship, confirming that the operator of the ship bears the responsibility in all cases. This agreement stipulates compensation for individuals and governments that incurred losses due to pollution resulting from petroleum hazards, as well as for individuals who took preventive measures to reduce that pollution (قداري ، 2018/2017، صفحة 104).

As for the crislal plan, this agreement was concluded on 14/01/1971 and came into effect on 1/04/1971. This plan complements the voluntary tovalop plan, as it directly reimburses pollution victims for the costs of cleaning and removing oil. Since 1978, the crislal plan has not been applied due to the implementation of the Brussels Convention establishing the fipol fund in 1978 (Helene &olivier , 1995, p. 104).

There was solidarity between the Tovalop agreement and the Crislal agreement, provided that the application requires the carrier to be owned by one of the parties to the Tovalop agreement. Another condition was set, which included that the affected party had exhausted all other means to obtain compensation without success. Both agreements were abolished and no longer have any actual existence now, specifically since February 1998, when their implementation was halted due to their loss of value because their provisions were similar to international agreements after their amendment and entry into force(بن شريف، 2014، صفحة 107).

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1.2.1- Conditions for the Fund's Intervention

The establishment of the Fund, as a mechanism to compensateindividualsaffected by hydrocarbon pollution whilesimultaneouslyprotecting the marine environment, does not negate the existence of specific conditions governingits intervention. These conditions are clearlystipulated in the Fund’sfounding agreement and primarilyrelate to the ship and the type of hydrocarbonsinvolved, whichwillbediscussed in this section.

1.2.1.1- The Ship

Considering that the ship is an essential element in the incident, it is a condition for the intervention of the fund, which necessitates its framing and definition, and what must be met for us to consider that this condition has been fulfilled. Therefore, we find that the 1971 Convention establishing the fund adopted the same definition found in the 1969 Civil Liability Convention, as stipulated in the second paragraph of its first article, where the ship is defined in its first article, first paragraph, as: "A ship means any vessel traveling at sea and any sea vessel of any kind that actually carries oil in bulk as its cargo"(سلسلة الاتفاقيات الدولية، 2012، صفحة 96).

However, the definition of a ship has undergone significant development and expansion under the 1992 Protocol on the 1969 Civil Liability Convention, in order to address the gaps and deficiencies that existed in dealing with major maritime disasters. The first paragraph of its second article, which amends the first paragraph of the first article of the 1969 Convention, stipulates that a ship means: "any maritime facility or vessel of any kind, constructed or adapted for the carriage of bulk liquids as cargo, provided that a vessel capable of carrying oil and other goods is considered a ship only when it is actually carrying bulk liquids as cargo, and during any voyage following such carriage unless it is proven that there are no residues resulting from the carriage of bulk liquids as cargo" (بن شريف، 2014، صفحة 76), And this is the same definition adopted by the International Convention on Civil Liability for Oil Pollution Damage of 1992 in its first paragraph of the article (iopcfumds.org).

The same definition was adopted in the amended protocol of the 1971 Convention establishing the Compensation Fund in 1992. However, despite using the same definition in both the original conventions and their amended protocols, there is a difference regarding this condition – the ship – as, unlike the 1969 Convention, which does not require the ship causing the pollution to be registered in one of the contracting states or to fly its flag for its application, The 1971 Convention stipulated that for the Compensation Fund to intervene to alleviate the financial burden on the shipowner and its guarantor, the pollution damage must occur in the territory of one of the contracting states to the 1969 Civil Liability Convention, including

its territorial sea, by a ship registered in one of the contracting states to the 1971 Convention, The 1971 FIPOL compensation fund only intervenes to alleviate the financial burden on the shipowner whose ship is registered under the nationality of one of the contracting states or flies the flag of that state. As for the victims, the fund does not concern itself with the nationality of the ship or the flag it flies, but rather with the location of the damage, which is the territory and territorial sea of a contracting state(177 صفحة ،2013/2012 ،بلقاسم).

However, in the amendment brought by the 1992 Protocol to the 1971 Convention, the geographical scope was expanded. According to the first paragraph of Article 3 of the 1971 Convention, the scope of compensation for pollution damage was limited to the territory of a contracting state only, including the territorial sea of that state. However, in the 1992 Protocol amending it, the first paragraph of Article 3 states: "This Convention shall apply exclusively to the following:

A- The damages caused by pollution occurring in the territory of a contracting state, including its territorial sea and in the exclusive economic zone of a contracting state, established in accordance with international law, or if the contracting state has not established such a zone, in an area beyond the territorial sea of that state and adjacent to it, as determined by the aforementioned state, in accordance with international law and provided that it does not extend beyond 200 nautical miles from the baselines from which the breadth of its territorial sea is measured.

And what has also been added under the amendment that affected the definition of the ship is not limiting compensation to damages caused by oil tankers when they are loaded with oil, but even when they are empty of cargo, as the text of Article 2 in its first paragraph of the 1992 Protocol on Civil Liability states, Compensation was specifically designated for ships that were built or adapted for the transportation of bulk fuels, thus requiring that the oil tanker be loaded in order to qualify for compensation. In addition to the aforementioned article's definition of the ship, it also opened the door for mixed-use vessels that transport oil and other goods, but it stipulated that at the time of the polluting incident, they must be loaded with bulk oil.

1.2.1.2- Hydrocarbons

In the original document of the agreement, whether the 1969 Civil Liability Convention or the 1971 Fund Convention, the term hydrocarbons was adopted to refer to the pollutant substance that triggers either liability or the Fund's intervention.

Hydrocarbons are a group of organic compounds composed of hydrogenated derivatives of carbon—except for the lighter ones and methane, which is a natural gas—primarily found in petroleum. In other words, we must distinguish between natural gas hydrocarbons on one hand and petroleum and its derivatives on the other.

In the context of this study, the term hydrocarbons refers to all fixed hydrocarbons, particularly crude oil, fuel oil, lubricating oil, and heavy diesel, whether transported on board a ship as cargo or in the holds of the ship. Non-fixed hydrocarbons such as gasoline, light diesel, and kerosene are not included within the scope of the 1969 Liability Convention and the 1971 Fund Convention(da kouri, 2011, p. 02).

Where we find the international convention related to the establishment of an international fund for compensation for pollution damage from hydrocarbons, it sets as a condition for the fund's intervention that the pollutant must be hydrocarbons and their derivatives. The first article, second paragraph, states that the term hydrocarbons is interpreted according to the provisions of the first article of the 1969 Civil Liability Convention. The latter, in its fifth paragraph of the first article, stipulates that "the term hydrocarbons means all fixed hydrocarbons, including crude oil, fuel oil, heavy diesel oil, lubricating oil, and whale oil, whether carried on board a ship as cargo or in the holds of that ship."

However, in Article 1/2, it was indicated that what is meant by the term "fuels" refers only to mineral ones, which excludes whale oil mentioned in the 1969 Civil Liability Convention, which was later excluded by the latter in its amendment under the 1992 Protocol to the Civil Liability Convention.

The reason for excluding whale oil and other animal and vegetable oils from the definition of hydrocarbons, both in the 1971 Convention establishing the Fund and its 1992 Protocol, is that most recipients of these oils are small institutions, each transporting limited

quantities of oil. This leads to significant complications in the subscription system and increased administrative expenses for the Fund, which are not commensurate with the Fund's operations (بن شريف، 2014، صفحة 79).

We find that the 1971 Convention did not suffice with the definition included in the 1969 Civil Liability Convention, but rather elaborated further, as Article 1/3 stipulates that the fuels leading to the intervention of the fund are both crude oil and fuel oil.

As for crude oil, it means any liquid mixture of oil extracted from the ground, whether in its natural form or treated in a way that allows its transport. This definition includes crude oils extracted from certain distilled materials (sometimes referred to as upper crudes) and those to which some distilled materials have been added (sometimes known as flowing or reconstituted crudes) (Paragraph A of Article 1, 1971).

While we find that it defines fuel oil as the heavy extracts or residues of crude oil or a mixture of these products intended for use as a fuel generating heat or energy, with a quality equivalent to the technical specifications issued by the American Society for Testing and Materials, listed under designation (396-369) and applicable to No. 4 oil, or heavier than this (Paragraph B of Article 1, 1971).

These types of hydrocarbons mentioned above are considered a condition for the fund's intervention when there is pollution of the marine environment by them. However, neither the convention nor its amended protocol stipulates that the fuels must be in bulk or in operational holds.

2- Cases of Fund Intervention and Its Financing Methods

After the Fund came intoeffect, itbecameobligated to compensate parties affected by marine pollution caused by hydrocarbons, providedthatthese parties are unable to obtainadequate compensation under the provisions of the 1969 International Convention on Civil Liability for Oil Pollution Damage.

Accordingly, the FIBOL Compensation Fundfulfillstwoprimaryroles: a supplementaryrole, whichcomplements the provisions of the Liability Convention, and a substitutive role, in which the Fund assumes the responsibility of the liable party for

compensation, in accordance with the conditions established by the 1971 International Convention thatcreated the Fund.

To analyze the Fund's intervention, this section isdividedintotwo main parts. The first part addresses the cases in which the Fundintervenes, while the second part examines the methods of financing the Fund.

2.1- Cases of the Fund's intervention

The Fund's interventions are defined in itsfounding agreement. Theseinclude cases in which the Fundperforms a supplementaryrole, complementing the compensation providedunder the Liability Convention, as well as cases in whichit assumes a substitutive or reserverole, taking over the responsibility of the shipowner and theirguarantor.

2.1.1- The Complementary Role of the Fund

Liability in the context of the 1969 International Convention on Civil Liability for Oil Pollution Damage is strict liability. In this type of liability, there is a maximum compensation limit that cannot be exceeded in many cases. Consequently, not all damages are covered if they exceed the maximum limit allowed for coverage. Applying this principle, the victim will bear the portion that exceeds the specified maximum limit. Hence, the importance of the fund in providing the victim with full compensation without bearing any part of the damages(بوفلجة، 2015، صفحة 273), The supplementary role of the FIPOL compensation fund is in the following cases:

1- In cases where insurance does not provide adequate compensation, the fund plays a complementary role that becomes necessary when the value of the damages caused by the polluting activity exceeds the maximum insurance amount specified in the contract(واعلي، 2010/2009، صفحة 311).

2- When the damages exceed the liability limits of the shipowner, as victims of a pollution incident often do not receive full compensation for the damages incurred due to the magnitude of the consequences and the significant exceedance of the compensation limits provided under the 1969 Civil Liability Convention, the 1971 Fund intervenes under Article 4/1/c of the Fund's establishing Convention to compensate the affected parties beyond these limits, up

to the maximumcompensation limit stipulated in Article 4/4/a of the 1971 Convention.

2.1.2- The Reserve Role of the Compensation Fund FIPOL

In addition to the supplementary role of the compensation fund established by its founding agreement, it also plays a reserve role in many cases, such as when the liability of the responsible party is proven to be insolvent, or in cases where the victim cannot identify or know the responsible person. In these cases, the fund intervenes to fully compensate the victim for the damages incurred. The fund can also intervene in reserve in cases where one of the grounds for exemption from liability or one of the grounds for excluding insurance applies, ensuring the victim's right to compensation (قايش، 2018، صفحة 138). Among these cases, we mention the following:

1- In the event that the liable owner according to the Civil Liability Convention is financially unable to fulfilll his full obligations, as well as any financial guaranty previously registered in accordance with Article 7 of the 1969 International Convention on Civil Liability for Oil Pollution Damage being unable to cover the damages in question and insufficient to meet the compensation claims for those damages, the owner is considered financially unable to fulfilll those obligations. The guaranty is also considered insufficient if the victim of the pollution incident has taken all reasonable measures to exercise the means available to him and has not been able to fully obtain the compensation amount due to him according to the provisions of the Civil Liability Convention (Article 4, Paragraph 1, Clause "b" relating to the establishment of the International Fund for Compensation for Oil Pollution Damage of 1971). In this case, the fund intervenes instead of the shipowner to compensate for the damages caused.

In addition to the owner's financial incapacity, Article 7/1 of the 1969 International Convention on Civil Liability for Oil Pollution Damage raises an issue as it states: "The owner of a ship registered in a contracting state and carrying more than two thousand tons of oil in bulk as cargo is required to maintain insurance or any other financial guaranty such as a bank guaranty, or a certificate issued by an international compensation fund, in the amounts established by applying the limits of liability provided in Article 5/1 to cover his

liability for pollution damage under the 1969 Civil Liability Convention." Thus, the issue raised by this article for oil tankers carrying less than 2000 tons of fuel is that they are not required to provide insurance, and therefore the financial incapacity of the oil tanker owner is total, making it impossible to benefit from any assistance from the insurer.

2- Among the cases in which the compensation fund also intervenes to cover, acting as a substitute for the shipowner, is in the case of exempting the shipowner from liability. This is stipulated in Article 4, paragraph A of the first section, which requires the fund to compensate if the civil liability agreement does not refer to any liability for the damages in question. Article 3, paragraph 2, specifies the cases in which the shipowner is exempted from liability, provided it is proven that the damage:

A- It may have resulted from acts of war, hostilities, civil war, or a natural phenomenon of an exceptional nature that cannot be avoided or resisted.

B- It may have entirely resulted from an act or deliberate omission with the intent to cause harm by a third party.

C- It may have entirely resulted from negligence or other unlawful acts by any government or other authority responsible for maintaining the lights or any other navigational aids during the performance of this duty (Paragraph 2 of Article 3 of the International Convention on Civil Liability for Hydrocarbon Pollution Damage of 1969, as amended by the Protocol of 1992.).

In this case, the fund intervenes to compensate these victims up to the maximum limit stipulated in the international agreement establishing the fund in 1971. The fourth paragraph of Article 4 states that these compensations do not exceed 450 million francs, while the sixth paragraph of the same article gives the General Assembly the authority to amend this maximum limit and raise it to 900 million francs.

2.2- Methods of funding the fund and cases of exemption

Since the primaryfunction of the Fundis to providefinancial compensation to parties affected by hydrocarbon pollution, it must possesssufficientfinancialcapacity to fulfillits obligations.

Furthermore, there are specific cases in which the Fundis exempt from the obligations imposeduponit, whichwillbeaddressed in this section.

2.2.1- Methods of Financing the Fund

The funding of the compensation fund for marine pollution by hydrocarbons is subject to various methods, but the subscription system remains the primary source of funding for this fund. The issue of funding plays an important role in the fund's ability to perform its tasks, which include financial compensation for those affected by hydrocarbon pollution. This was emphasized by those involved in drafting the 1971 Convention texts, stating that the funding methods for the compensation fund are thru subscriptions borne by oil companies, "the oil-importing industry," affiliated with the countries that manage the fund(زروالي، 18/05/2017، صفحة 05).

Every person who receives annually in the ports or terminal facilities located in the territory of one of the member states of the relevant compensation fund, a total quantity equal to or exceeding 150,000 tons of crude oil or heavy fuel oil transported by sea, is obligated to contribute to the funding of the treasury of the 1971 Fund, the 1992 Fund, and the 2003 Supplementary Fund. Thus, the obligation to contribute to the funding of these funds does not fall on recipients of all types of heavy fuels but only on those mentioned above. This means that the oil industry in the contracting states that receive or handle only these two types of fuels is obligated to contribute(تيغلت، 2016، صفحة 165).

Referring to the 1992 Protocol of the 1971 Agreement, we find that it regulates the contributions of the petroleum industry to compensate the victims, considering them to be based on solidarity and not on liability(بن شريف، 2014، صفحة 68).

The contributions stipulated in the 1971 Fund Establishment Agreement are of two types: the first type is the initial contributions, while the second type is the annual contributions. However, in the 1992 amendment to the agreement by the protocol, the first type was abolished, and only the annual contributions were retained. This was also adopted by the 1992 Compensation Fund Establishment Agreement and the 2003 Supplemental Compensation Fund Establishment Protocol.

Following the cancelation of the initial subscriptions, the annual subscriptions remain the only source of funding for the two funds. As for the body responsible for determining the amount and method of calculation, in addition to the necessary guaranties to enable the fund to collect subscriptions from those obligated to pay them, it has remained as stipulated in the 1971 Agreement(تيغلت، 2016، صفحة 168), represented by the General Assembly. This is what the second paragraph of Article 12 of the latter stipulates, stating: "The amount of the annual subscription is determined by the Assembly for each person referred to in Article 105 ...".

2.2.2- Cases of Exemption for the Fund

The 1971 Fund Convention did not overlook the cases in which the Fund is exempted from compensation, and these cases were specified as follows:

1- State of war: Article "A" of the second paragraph of Article Four states that the fund is exempt from its obligations if: "it proves that the damage from pollution resulted from a state of war, aggression, civil war, armed insurrection, or if it proves that it resulted from a spill or discharge of oil from a warship...".

2- Case of failure to prove that the damage occurred due to a ship: Clause "b" of the second paragraph of Article Four states that the fund is also exempt from all its obligations if: "the claimant has not been able to prove that the damages resulted from an incident caused by one or more ships." This is what we previously addressed in the conditions for the fund's intervention, as the ship is a fundamental condition for the fund's compensation intervention. However, the conditions stipulated by the fund's establishment agreement must be met for this ship to be considered among the types of ships necessitating the fund's intervention.

3- The case of a person causing damage thru negligence or intentionally: The 1971 Convention stipulated in paragraph 3 of Article 4 that: "If the Fund proves that the pollution damage resulted wholly or partially, whether the incident occurred because the affected person acted or attempted to act with the intent to cause damage, or whether it occurred due to the negligence of that person, in both cases the Fund may be fully or partially exempted from its compensation obligations toward that person, except to the extent of the preventive

measures referred to in paragraph 1 of this article ...". In the 1992 Protocol amending the 1971 Fund Convention, this paragraph was amended by paragraph 2 of Article 6 of the Protocol, which eliminated any ambiguity regarding the Fund's commitment to preventive measures, stating that this exemption does not apply to preventive measures.

4- In addition to the aforementioned cases of exemption, we find that the third paragraph of Article Five states: "The fund may be exempted (in whole or in part) from its obligations toward the owner or his guarantor... If it is proven that it is due to the owner's personal fault:

A- That the ship from which the fuel that caused the pollution incident flowed did not comply with the provisions specified in: A-1- The International Convention for the Prevention of Pollution from Ships (MARPOL) adopted in 1954 and amended in 1962-1969. A-2- The International Convention for the Safety of Life at Sea of 1960.

A-3- The International Convention on Load Lines, 1966. A-4- The International Regulations for Preventing Collisions at Sea 1960 (as amended).

A-5- The amendments made to the aforementioned agreements... B- Or that the incident or damage may have resulted wholly or partially from the non-compliance with those provisions.

Conclusion

In conclusion, ourstudy on compensation for marine environmental damage caused by oil pollution through the International Oil Pollution Compensation Fund (FIPOL) has led to a set of findings and recommendations, as outlinedbelow:

Results:

1- The marine environment has facedsignificantriskssince the advent of large oil tankers, makingitimperative to establish an effective mechanism for oilspill protection withoutdelay.

2- The compensation fund system plays a crucial role in covering the costs of damage remediation, given the substantialexpensesassociatedwiththis type of environmentalharm.

3- Not all oil transport companies are mandated to participate in and contribute to thisFund.

4- This Fund serves as a supplementarymechanism to the 1969 Civil Liability Convention for Oil Pollution Damage.
5- Exporting countries are not heldcivilly liable for any damage resultingfrom the transportation of oil.

Recommendations:

1- Although the original agreement establishing the Compensation Fundwasintended to complement the Civil Liability Convention for pollution damage caused by hydrocarbons, future drafters of anyamendments to the agreement shouldconsiderdetachingitfrom the Civil Liability Convention to ensuregreaterclarity in itswording.
2- Given the extensive damage caused by fuel pollution and the inherentdifficulty in controlling and limitingsuch damage, the parties to the agreement shouldconsiderincreasing the compensation limits. This adjustmentshouldtakeintoaccountadvancements in fuel transportation methods, includingboth the capacity of vessels and the volumes of fuel transported.
3- Uponreviewing the cases in which the Fundis exempt fromproviding compensation, someambiguitybecomes apparent in Article 4(1)(a), whichstipulatesthat compensation isgrantedwhen the shipowneris exempt fromliabilityunder the 1969 Civil Liability Convention, with one of the reasons for such exemption being a state of war, as mentioned in Article 3(2)(a). However, Article 4(2)(a) of the Fund's Establishment Convention subsequently states that the Funditselfis exempt fromproviding compensation in cases of war, creating a potentialoverlap or contradiction between the two provisions.
4- There is a need to expand the scope of the Compensation Fund's intervention to include a wider range of fuels, ratherthanlimitingitsolely to crudeoil and heavy fuel oil.
5- The scope of contributions to the Fundshouldbebroadened to include not onlyimporting countries but alsoexporting countries, as theytoobenefitfrom the transportation of fuels. The contribution amount for exporting countries maybe set at a lower rate to reflecttheirrole.
6- Article 7(1) of the **1969 Civil Liability Convention**, as amended by the **1992 Protocol**, exempts owners of vesselswith a cargo capacity of lessthan 2,000 tons of fuel frommaintaininginsurance or

anyotherfinancialguarantee, such as a bankguarantee or a certificateissued by an international compensation fund for the prescribedamount. This exemption could place a significantburden on the Fund, as itmaybecome the sole entityresponsible for covering pollution damages in the event of the vesselowner'sinsolvency.

7- Efforts shouldbe made to unify the translation of the twoagreements—both the **1969 Civil Liability Convention** and itsamendmentprotocols, as well as the **1971 Fund Convention** and the 1992 Protocol, alongwiththeir respective amendments—fromforeignlanguagesintoArabic. Currently, significantdiscrepanciesexist in the translation of terms, which lead to inconsistencies in the reading, application, and interpretation of theseagreements.

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