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AFRICAN UNION MODEL LAW FOR THE INCORPORATION OF THE INTERNATIONAL CIVIL LIABILITY AND COMPENSATION REGIME FOR OIL POLLUTION DAMAGE

A Legislation Drafting Project submitted in partial fulfilment of the requirements for the award of the Degree of Master of Laws (LL.M.) in International Maritime Law at the IMO International Maritime Law Institute

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United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982, entry into force:16 November 1994, No.31363, C.N.577.2020. TREATIES-XXI.6.

International Convention on Civil Liability for Oil Pollution Damage, Brussels, 29 November 1969, entry into force: 19 June 1975, 973 UNTS 3; 9 ILM 45; RMC I.7.30, II.7.30.

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, Brussels, 18 December 1971, entry into force: 16 October 1978, 1110 UNTS 57, RMC I.7.90, II.7.90.

Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, London, 27 November 1992, entry into force: 30 May 1996, 1953 UNTS 330; RMC I.7.111, II.7.111.

Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969, London, 29 November 1992, entry into force: 30 May 1996, 1956 UNTS 255, RMC I.7.51, II.7.51.

Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, London, 16 May 2003, entry into force: 3 March 2005, IMO Doc: LEG7CONF.14/20 of 27 May 2003; RMC 1.7.115, II.7.115.

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Explanatory Note

1. Introduction

"If failure has to be accepted in this instance, one thing at least is clear: the lesson of the *Torrey Canyon* must be taken to heart. So far as is humanly possible, the repetition of such a disaster must be avoided……."[1]

Since the 1860s, the sea was being used as a means of transportation for oil. However, the serious consequences of incidents related to oil tanker vessels, particularly those resulting in oil pollution damage, were only taken into consideration after the *Torrey Canyon* incident in 1967. Subsequently, different international instruments were adopted to address this important yet overlooked issue.

In this light, the liability and compensation related to oil pollution damage are regulated by the 1969 International Convention on Civil Liability for Oil Pollution Damage (hereinafter the 1969 CLC),[2] the 1992 CLC Protocol (hereinafter the 1992 CLC),[3] and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage,[4] as amended by the 1992 Protocol thereto (hereinafter the 1992 Fund Convention).[5] Additionally, there is also the Protocol that created a third tier of compensation regime that was ultimately adopted in 2003 (hereinafter the 2003 Supplementary Fund Protocol).[6]

It is important to note that these Conventions provide a clear three-tier mechanism on how the costs of clean-up measures and oil pollution damage can be recovered on a strict liability ('no fault') basis from the individual tanker owner and insurers (first-tier), the International Oil Pollution Compensation (IOPC) Funds (second-tier), as well as the Supplementary Fund (third-tier).

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[1] Commandant L. Oudet, 'The Black Flood: Lessons of the Torrey Canyon' (2010) The Journal of Navigation CPU Vol. 21

[2] The 1969 International Convention on Civil Liability for Oil Pollution Damage (the 1969 CLC), adopted on 29 November 1969, entered into force on 19 June 1975, 973 UNTS.

[3] Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969, London, 29 November 1992, entry into force: 30 May 1996, 1956 UNTS 255.

[4] International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, Brussels, 18 December 1971, entry into force: 16 October 1978, 1110 UNTS 57.

[5] Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, London, 27 November 1992, entry into force: 30 May 1996, 1953 UNTS 330.

[6] Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, London, 16 May 2003, entry into force: 3 March 2005, IMO Doc: LEG7CONF.14/20 of 27 May 2003.

Accordingly, this document introduces the Draft African Union (AU) Model Law – a model law that seeks to facilitate the adoption of the above-mentioned instruments, particularly the 1992 CLC and 1992 Fund Convention, regarding liability and compensation for oil pollution damage via the national legislation of the African Union for Member States. Even though the adaptation of a model law is likely to generate debate on the merits of proposing a model law for countries with a variety of legal traditions, model laws have been increasingly used to encourage the development of laws on the national, regional and international levels. This is because model laws are useful reference tools and provide a wider context for national drafters whilst allowing for a deep reflection into the substance of obligations that these conventions and protocols have established, thereby facilitating the best possible ways in which to devise domestic legislation.

As such, the Draft AU Model Law will not only help expedite the adoption of the relevant Conventions regulating the liability and compensation for oil pollution damage regime by State Parties; it will also facilitate the incorporation of the Conventions into the domestic laws of State Parties via the enactment of relevant legislation on oil pollution damage that is in conformity with international law. Furthermore, given the fact that the AU is expected to play a more proactive role in the implementation of the International Maritime Organization (IMO) instruments, the Draft AU Model Law will also have the added benefit of assisting in the implementation of the Conventions as a framework for regional and international cooperation.

The drafting of the Draft AU Model Law followed a comprehensive approach in order to make it possible for national authorities to adapt these regulatory frameworks into their national legislation. As such, an attempt has been made to be faithful to the letter and spirit of the Conventions on liability and compensation for oil pollution damage. As a consequence, most of the provisions are drawn from the relevant Conventions with only slight adjustments made in order to accommodate for the legal context of Member States.

As such, to create a better understanding of the provisions and the purpose of the instruments, the explanatory note seeks to reflect on the major events that led to the adoption of these instruments, the content of the relevant conventions, their relevance to the Member States of the AU and the benefits of its comprehensive implementation. Subsequently, in the second part, the model law is divided into five parts and 44 articles. The draft articles are organized to follow the structure of the relevant conventions covering all aspects of civil liability for oil pollution damage. It also contains provisions

for the compensation for oil pollution damage.

Part I deals with general provisions regarding the definitions of terms. After which, Part II outlines those substantive provisions of the Draft AU Model Law that deal with civil liability for oil pollution damage. Then, Part III deals with the compensation available under the 1992 Fund Convention.

It is important to note at this stage that the 2003 Supplementary Fund Protocol is included in the explanatory note, but not in the draft model law. This is because the International Oil Pollution Compensation Fund 1992 is established under the Fund Convention in order to provide compensation for victims who do not obtain full compensation under the 1992 Civil Liability Convention and the two Conventions are intended to work in tandem. Thus, taking into consideration that the 2003 Supplementary Fund Protocol is one part of the liability and compensation for oil pollution damage regime, and that it may not be in the interest of all States to acceded to it, only the content of the Protocol is explained in an attempt to give a full overview.

All in all, the Draft Model Law could enable States to adopt a comprehensive legislation that regulates the liability and compensation for oil pollution damage. Furthermore, given its comprehensive nature, the Draft AU Model Law can also be used as a resource in the drafting process of any national legislation that seeks to implement the 1992 CLC Protocol and the Fund Convention at the national level. In addition, the Draft AU Model Law is also designed in a manner that allows for the flexible adaptation of its articles to the specific legal traditions and oil pollution damage of each State.

As foreseen under Article 211 of the United Nations Convention on the Law of the Sea (UNCLOS), coastal States are encouraged to adopt laws and regulations for the prevention, reduction and control of pollution from vessels conforming to and giving effect to generally accepted international rules and standards.[7] As such, the drafting and implementation of domestic law on civil liability and compensation would be greatly facilitated by the process of developing regional instruments that could help the State assess the extent, causes and severity of oil pollution damage. Finally, the drafter contends that it is important to coordinate with the AU Commission in order to develop those sample instruments that will be included as a supplement to the final text of the Draft AU Model Law.

[7] United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982, entry into force:16 November 1994, No.31363, C.N.577.2020. TREATIES-XXI.6, *See* Article 211.

2. Historical Background

At the international level, the concern for the impact of shipping on the marine environment began in the 1950s when the government of the United Kingdom convened a conference in 1954 that was meant to introduce measures against the deliberate discharging of oil and oily residues into the territorial sea of States. Consequently, the 1954 International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL) was adopted. The Convention sought to address oil pollution by prohibiting the discharging of oil or oily mixtures within the "prohibited zones" extending 50 miles from the mainland and regulating the magnitude of pollution by restricting the rate of discharge. In addition, the Convention also regulated the necessity for discharge by establishing construction and equipment criteria that aimed to reduce the quantity of waste oil or to separate oil from ballast water.[8]

Additionally, the four Geneva Conventions were adopted in 1958.[9] Even though the Geneva Convention on the High Seas[10] contained provisions on marine pollution, it did not recognize maritime accidents as a major contributor to marine pollution.

However, the major instigating factor for the liability regime for oil pollution damage was the *Torrey Canyon* disaster of 18 March 1967. *Torrey Canyon* was a Liberian registered oil tanker that was loaded with approximately 119,000 tonnes of crude oil that was ultimately grounded on the rocks off the Cornwall coast, just outside the British territorial sea, while it was *en route* from Kuwait to a refinery at Milford Haven, UK. From the 30,000 tons of crude oil that immediately spilled into the sea from the stricken vessel's ruptured tanks, the entire cargo of Kuwait crude oil was lost during the next 12 days. By March 25, the oil began to arrive on the Cornish beaches, affecting 100 miles of coastline. A wide variety of methods were tried to mitigate the spill. However, the last resort to alleviate the situation was the order given by the British Government for the *Torrey Canyon* to be destroyed by aerial bombardment, so that all the oil remaining on board would be burnt off.[11]

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[8] The International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL), adopted on 12 May 1954, entered into force on July 1958, 327 UNTS 3; BGBl. 1956 II, 379. It was updated in 1962 (OILPOL 62), 1969 (OILPOL 69), and 1971 (OILPOL 71).

[9] On 29 April 1958, as recorded in the Final Act (A/CONF.13/L.58, 1958, UNCLOS, Off. Rec. vol. 2, 146), the United Nations Conference on the Law of the Sea opened for signature four conventions and an optional protocol: the Convention on the Territorial Sea and the Contiguous Zone (CTS); the Convention on the High Seas (CHS); the Convention on Fishing and Conservation of the Living Resources of the High Seas (CFCLR); the Convention on the Continental Shelf (CCS); and the Optional Protocol of Signature concerning the Compulsory Settlement of Disputes (OPSD).

[10] Geneva Convention on the High Seas, adopted in April 1958, entered in to force in September 1962, 450 UNTS 11;1089.

[11] Torrey Canyon: The World's First Major Oil Tanker Disaster, 'SAFTY4SEA', https://safety4sea.com/cm-torrey-canyon-the-worlds-first-major-oil-tanker-disaster/ accessed on 20 December.

As such, after fifty years of the occurrence of the incident, the *Torrey Canyon* disaster was reminisced by the British Broadcasting Company (BBC) as "the day the sea turned black".[12] Given that it was the first major oil spill in British and European waters, causing massive damage to the livelihoods of local people and marine life, it led to changes in the way people viewed the environment. It also caught the attention of the international community as a problem that needed the urgent attention of the International Maritime Organization (IMO) and catalysed their work on liability and compensation. As a result, an *ad hoc* Legal Committee was established to deal with the legal issues raised by the world's first major tanker disaster and the Committee soon became a permanent subsidiary organ of the IMO Council, meeting twice a year to deal with any legal issues raised at IMO.[13]

Correspondingly, the *ad hoc* Committee met twice in 1967 and created two working groups. In terms of the *Torrey Canyon* Work Programme, the Committee's mandate was divided between questions of public international law and private law. The public international law element was whether a coastal State was entitled to take measures against vessels that were posing a pollution threat to its coastlines. The private law aspect was the nature, extent and amount of liability in cases of large-scale pollution, and by whom this liability should be borne.[14] These issues were discussed and negotiated at the meetings and resulted in the adoption of the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (1969 Intervention Convention)[15] and the 1969 CLC. Given that the drafter's focus was on the consequences of a maritime incident resulting in oil pollution damage, it is important to note that, from the two international treaties that were adopted as a result of the *Torrey Canyon* incident, it is only the 1969 CLC that is of particular importance for this project.

However, after the adoption of the 1969 CLC, it was realised that the compensation made available by the ship owner and the insurers was inadequate. As such, States were "*Convinced of the need to elaborate a compensation and indemnification system supplementary to the International Convention on Civil Liability for Oil Pollution Damage with a view to ensuring that full compensation will be*

[12] Bethan Bell and Mario Cacciottolo, 'Torrey Canyon oil spill: The day the sea turned black', BBC, (London 17 March 2017) <https://www.bbc.com/news/uk-england-39223308> accessed on 20 December 2020.
[13] International Maritime Organization (IMO) Website, Legal Affairs, 'Liability and Compensation, <https://www.imo.org/en/OurWork/Legal/Pages/LiabilityAndCompensation.aspx. Accessed on 16 December 2020.
[14] Inter-governmental Maritime Consultative Organization (IMCO), Yearbook of the United Nations, (YUN 1967), Part 2. Chapter XIV.
[15] International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, adopted on 29 November 1969 and entered into force on 6 May 1975, 970 UNTS.

available to victims of oil pollution incidents."[16] As a result, after the 1969 Brussels Conference considered a compromise proposal to establish an international fund, the Convention establishing the Fund Convention was adopted in 1971. Unlike the 1969 CLC, which put the responsibility solely on the shipping industry, the Fund Convention transformed the concept developed under the 1969 CLC by creating a joint responsibility among the oil cargo and shipping industries. That being the case, the Fund Convention is applicable when an incident that led to pollution damage exceeds the compensation available under the 1969 CLC.

It is important to note that the 1969 CLC and the 1971 Fund Convention were being used simultaneously until they were ultimately considered for revision and amendment; leading to the adoption of the 1992 CLC and the 1992 Fund Convention. The 1992 Fund Convention, which is supplementary to the 1992 CLC, "*provides compensation for pollution damage to the extent that the protection afforded by the 1992 Liability Convention is inadequate*."[17] Soon after the adoption of the 1992 Fund Convention, the 1971 Fund Convention, which was envisioned to work concurrently with the 1969 CLC, ceased to be in force from 24 May 2002.[18]

Subsequently, the 2003 Supplementary Fund Protocol was adopted. The Protocol was adopted with the purpose of supplementing the 1992 Fund Convention when the person suffering pollution damage has been unable to obtain full and adequate compensation under the terms of the 1992 Fund Convention because the total damage exceeds, or there is a risk that it will exceed, the applicable limit of compensation under the 1992 Fund Convention in respect of any one incident.[19]

Hence, the 1992 CLC, the 1992 Fund Convention along with the 2003 Supplementary Fund Protocol create a comprehensive regime for settling claims of oil pollution damage.

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[16] The International Convention on establishment of an International Fund for Compensation for Oil Pollution Damage (FUND Convention), adopted on 18 December 1971, entered into force on 16 October 1978, see the preamble para. 5.

[17] International Convention on the establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, adopted on 27 November 1992, entered into force 30 May 1996, See Article 2, Paragraph 1(a).

[18] International Maritime Organization (IMO) Website, 'Conventions - International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND)' <https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-the-Establishment-of-an-International-Fund-for-Compensation-for-Oil-Pollution-Damage-(FUND).aspx accessed on 30 December 2020. The 1971 Fund Convention ceases to be in force on the date when the number of Contracting States falls below twenty-five in accordance to what is stated under ***the 2000 Protocol*** which was adopted to terminate the 1971 Fund Convention. As intended under the 2000 Protocol this happened on 24 May 2002, because of the denunciations by States Parties to Fund 1971 in favour of their membership of Fund 1992.

[19] The 2003 Protocol Establishing an International Oil Pollution Compensation Supplementary Fund, adopted on 16 May, 2003, entered into force 3 March 2005, see Article 4 Paragraph 1.

3. The Regime of Liability and Compensation for Oil Pollution Damage

3.1.The 1969 CLC and amendments under the 1992 CLC

Both the 1969 CLC and the 1992 CLC impose strict liability on the ship owner, which means that there is no need to prove negligence, i.e. a first tier of compensation.[20] Nevertheless, unlike the 1992 CLC which covers spills of persistent oil from sea-going vessels constructed or adapted to carry oil in bulk as cargo, the 1969 CLC only covers spills of oil from laden tankers. As such, countries that are State Parties only to the 1969 CLC will only be covered for incidents arising from spills from laden tankers, whilst countries that have also ratified the 1992 CLC Protocol will be covered for damage arising from any relevant oil pollution incident involving an oil tanker.

Additionally, the 1992 CLC has widened the scope of compensation by including the cost incurred for preventive measures. Therefore, even under the circumstances where there is no oil spill, as long as there is expense incurred for preventive measures to avoid a grave and imminent threat of pollution damage, the cost will be recovered. The 1992 CLC also widened the territorial applicability of the Convention. While the 1969 CLC covers pollution damage that occurred in either the territory or the territorial sea of a Contracting State, the 1992 CLC added to its geographical scope in order to cover pollution damage that either occurred in the exclusive economic zone or an equivalent area of a Contracting State.

Furthermore, given the need to keep pace with inflation, the cost of mitigating for oil spill and world currency, the limit of compensation has been raised from 1.4 special drawing Right (SDR)[21] to 89,770,000 SDR by the 1992 CLC.[22] With the improvement in compensation, the 1992 CLC has also introduced limitation slices in determining limitation of liability. Although the liability of the owner is limited according to the ship's tonnage up to an aggregate maximum amount in both the Conventions, the 1992 CLC introduced the limitation slices based on the tonnage of the sip in place

[20] 1969 CLC, (n 2*). See* Article 3 (1).
[21] The SDR (Special Drawing Write) is an international reserve asset, created by the IMF in 1969 to supplement its member countries' official reserves. The value of the SDR is based on a basket of five currencies – the U.S. dollar, the euro, the Chinese renminbi, the Japanese yen and the British pound sterling. *See* the IMF Website, https://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/14/51/Special-Drawing-Right-SDR. Accessed on 9 January 2021.
[22] *See* section 3.2.4

of the method of limitation of an aggregate amount for each ton of the ship's tonnage .[23] In this regard, the 1969 CLC and the 1992 CLC differ in the method used for calculating the limitation amounts. In the 1969 CLC, the limitation amount was expressed in a unit of account known as the Franc Poincaré. Nevertheless, this account was changed to the more stable Special Drawing Right (SDR), a basket currency updated daily by the International Monetary Fund (IMF), by way of two Protocols adopted in 1976.

3.2.The 1992 CLC

3.2.1. Scope of the Convention

The 1992 CLC can be applied towards the owner, if the character of the ship falls under the definition of a ship as provided under Article 1 (1) of the 1992 CLC:

Ship means any sea-going vessel and seaborne craft of any type whatsoever ***constructed or adapted for the carriage of oil in bulk as cargo,*** provided that a ship capable of carrying oil and ***other cargoes*** shall be regarded as a ship ***only when it is actually carrying oil in bulk as cargo*** and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.

To that effect, the Convention applies to pollution incidents involving dedicated oil tankers and to other ships that have been adapted for the carriage of oil in bulk. That being the case as to the character of the ship, the pollution damage suffered that falls under the 1992 CLC must be "*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, along with impairment of the environment and the costs of preventive measures*."[24] Therefore, in addition to the immediate damage, the costs of preventive measures taken after the incident to either prevent or minimize pollution damage are also considered as damage. Not only that, further loss or damage caused by preventive measures are considered as damage. Moreover complementarily, the oil that escaped or was discharged at the time of the incident must only be "*persistent hydrocarbon mineral oil*".[25]

[23] Ibid., Article 5.
[24] The 1969 CLC, (n 2). *See* Article 2
[25] The 1992 CLC (n 3) *See* Article 1(5). Caryn Anderson, 'Persistent Vs. non-persistent oils', The International Tanker Owners Pollution Federation Limited (ITOPF), (2001) A Petroleum based oil that does not meet the distillation criteria for non-persistent oil. A non-persistent oil is a petroleum-based oil that consists of hydrocarbon fractions: A) At least 50% of which by volume, distil at a temperature of 340°C (645°F) and B) At least 95% of which by volume, distil at a temperature of 370°C (700°F).

Hence, the Convention applies when there is pollution damage caused by all seagoing vessels carrying persistent oil in bulk as cargo or if there is the imminent threat of causing such damage. Besides, the Convention covers claims of property damage, consequential loss and pure economic loss. However, only ships carrying more than 2,000 tons of oil are required to maintain insurance in respect of oil pollution damage.[26]

In addition to these, the Convention makes an exception for warships or other vessels owned or operated by a State and used for the time being by the government for non-commercial service.[27] However, the Convention's liability and jurisdiction provisions will apply for those ships that are owned by a State and are being used for commercial purposes. The only exception regarding such ships is that they are not required to carry insurance. Instead, they must carry a certificate issued by the appropriate State authority that the ship's liability under the Convention is covered. [28]

3.2.2. Geographical Application

The 1992 CLC provides a broader geographical application by providing much more extensive coverage to the pollution damage that either occurred in the exclusive economic zone (EEZ) or an equivalent area of a Contracting State. Consequently, when the oil pollution damage occurs in the territory, territorial sea and the EEZ or equivalent area, the 1992 CLC can be implemented by a State Party to the Convention.

3.2.3. Liability for Oil Pollution Damage

As previously mentioned, the 1992 CLC states that the owner[29] of the polluting vessel is strictly liable.[30] Therefore, ship owners of tankers carrying more than 2,000 tonnes of oil in bulk as cargo are required under the 1992 CLC to maintain insurance or other financial security, and to carry on board each tanker a certificate attesting to the fact that such cover is in force.[31] Correspondingly, in order to get reimbursed by the owner or the insurer, the claimant must establish that the polluting oil came

[26] The 1969 CLC, (n 2). *See* Article 7 (1) and the 1992 Protocol, (n 3). *See* Article 7 (1).
[27] Ibid. *See* Article 11 (1) and Article 11(1) (1992 Protocol).
[28] Marine Safety Manual: Marine Environmental Protection, (1997), Vol. 10. Page 19.
[29] The 1992 Protocol, (n 3). *See* Article 1 (3), "Owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "owner" shall mean such company.
[30] Ibid. *See* Article 3 (1).
[31] A Guide to International Conventions on Liability and Compensation for Oil Pollution Damage, A Joint IPIECA/ITOPF Publication (2007).

from the ship owner's vessel. Nevertheless, under the circumstances where pollution damage results from the escape of oil from more than one ship and where the damage is not reasonably separable, the registered ship owners of both ships will be held jointly and severally liable.[32]

In addition, the 1992 CLC channels all claims for compensation to the ship owner by excluding the liability of other parties. To this end, the 1992 CLC provides a broad list of persons who cannot be held accountable. Nevertheless, liability may go beyond the owner when the persons listed under Article 3, Paragraph 4 of the Conventions caused the damage from their own "*personal act or omission, with the intent to cause such damage, or recklessly and with the knowledge that such damage would probably result*." Yet, claims are precluded against these persons unless these circumstances are satisfied.

3.2.4. Limitation of Liability

The ship owner may not be liable if he can prove that the pollution damage resulted from an act of war or a natural disaster or was wholly caused by the intentional act or omission of a third party or the negligence of a government or another authority that was responsible for the maintenance of lights or other navigational aids in the exercise of that function. Additionally, under the Convention, the ship owners are entitled to limit their liability, with the maximum amount of liability conditional upon the tonnage of the ship.

SHIPS TONNAGE	**1992 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

Regardless of the ship owner's entitlement, the ship owner may lose the right to limit his liability*, "if the pollution damage resulted from personal act or omission committed with the intent to cause such*

[32] Ibid. *See* Article 4.

damage, or recklessly and with knowledge that such damage would probably result".[33] In this regard, the 1992 CLC is more restrictive and goes beyond the knowledge of the owner in determining the limitation of their liability.

3.2.5. Constitution of a Limitation Fund

The ship owner has the obligation to constitute a limitation fund for the total sum representing the limit of liability in order to benefit from their limitation right. In this regard, considering that the money should be in the possession of the court, the owner shall constitute the total sum representing the limit of liability to the Court or other competent authority of any one of the Contracting States in which action is brought under Article 9 of the 1992 CLC. However, if no action is brought before any Court or other competent authority, the fund can be constituted by:[34]

1. depositing the sum or
2. producing the bank guarantee or
3. any other way acceptable to the contracting state where fund need to be constituted.

However, the fund must be considered to be adequate by the Court or other competent authority. Subsequently, the fund will be distributed among the claimants in proportion to the amounts of their established claim.[35]

In addition to what is mentioned above, the constitution of a fund also benefits the ship owner, as it ensures that their ships are not arrested by the claimant. Where a limitation fund has been constituted and under the circumstance where the ship owner has not lost the right to limit their liability, claimants are not entitled to exercise any right against other assets of the ship owner in respect of that incident.[36] Furthermore, any ship or other property belonging to the owner which may have been arrested following an oil pollution incident and any bail or other security furnished to avoid such arrest must be released, once a limitation fund has been set up. Moreover, the insurer is also entitled to constitute a limitation fund on the same conditions and having the same effect as if it were constituted by the ship owner.[37]

[33] The 1992 CLC, *See* Article 5(2)
[34] Ibid, *See* Article 5 (3).
[35] Ibid, *See* (4).
[36] Ibid, *See* Article 6.
[37] Ibid, *See* Article 5 (11).

3.2.6. Compulsory Insurance, Mandatory Certification and Direct Action

In order to be able to meet the ship owner's potential financial obligations under the 1992 CLC, ships that are registered in a Contracting State that carry more than 2,000 tonnes of oil in bulk as cargo are required under the 1992 CLC to maintain insurance or another form of financial security, such as a bank guarantee or a certificate provided by an international compensation fund.[38] A certificate attesting that the insurance or financial security is in force in accordance with the Convention must be issued to each ship by the appropriate authority of a Contracting State with the official language of the issuing State.[39] Such certificates issued or certified under the authority of a contracting State must be recognised by other Contracting States as having the same force as certificates issued by them, even if issued in respect of a ship not registered in a Contracting State.[40] As such, ships registered in non-Contracting States are required to maintain the necessary financial security in order to operate within the waters of a Contracting State; for these ships, the relevant certificates may be issued by the appropriate authority of any Contracting State. Moreover, Contracting States must not permit a ship under its flag to trade unless a certificate has been issued.[41]

Additionally, the 1992 CLC allows the claimant to bring a direct action against the insurer or any other person that is providing financial security to the ship owner.[42] This right of action allows the claimant to recover, even where the ship owner is not financially capable of settling claims, for example, where the ship owner has become bankrupt or insolvent.[43] Notwithstanding the case of bankruptcy and insolvency of the owner, the insurer may avail themselves of the defences available to the ship owner. Even where the ship owner has lost their right to limitation, and the insurer may also invoke the same defences available to the ship owner under the Convention. Thus, the insurer will not be liable if the ship owner's liability is excluded under the Convention. In addition, the insurer can avoid liability altogether if it is proved that the pollution damage resulted from the wilful misconduct of the ship owner. The insurer cannot however, avail themselves of any other defences that may ordinarily be available, such as avoidance of the insurance contract for breach of a warranty, for misrepresentation, or for breach of the duty of good faith. That being the case, in terms of the liability of the insurer, claims for pollution damage (including clean-up costs) for which the tanker owner would be liable

[38] The 1992 Fund Convention (n 3). *See* Article 7 (1).
[39] Ibid. *See* Article 7 (2) and (3).
[40] Ibid. *See* Article 7 (7).
[41] Ibid. *See* Article 7 (10).
[42] Ibid. *See* Article 7 (8).
[43] Liability and Compensation for Ship-Source Oil Pollution: An Overview of the International Legal Framework for Oil Pollution Damage from Tankers, United Nations Conference on Trade and Development (UNCTAD), (2012), Studies in Transport Law and Policies.

may be brought directly against the insurer or provider of financial security under the 1992 CLC.

3.3. International Convention on the establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (The 1992 Fund Convention)

3.3.1. Scope of the Convention

The 1992 Fund Convention supplements the 1992 CLC and provides compensation when the amount paid by the ship owner or their insurer is insufficient to compensate all victims in full. However, States may accede to the Protocol only if the States have acceded to the 1992 CLC.[44]

As per *Article 4, Paragraph 1* of the 1992 Fund Convention, compensation shall be paid if a person suffering pollution damage:

- is unable to obtain full and adequate compensation for the damage under the terms of the 1992 CLC;
- if no liability for the damage arises under the 1992 CLC;
- if the ship owner is financially incapable of meeting their obligations in full under the 1992 CLC and the insurance is insufficient to pay valid compensation claims.
- if the damage exceeds the owner's liability under the 1992 Liability Convention.

With regards to the Convention's geographical applicability, the Convention is like the 1992 CLC in that the Fund Convention applies to pollution damage that was caused in the territory, including the territorial sea of a Contracting State, the EEZ of a Contracting State or in an area beyond and adjacent to the territorial sea of that State.[45]

Furthermore, as a fund that was established under the Fund Convention, the International Oil Pollution Compensation Fund (IOPC) provides compensation for pollution damages that have occurred only in a contracting State[46] and where the claimant can prove that the oil which caused the pollution damage originated from a ship.[47] However, the IOPC Fund will not be accountable if the pollution damage occurred from either an act of war, hostilities, civil war, insurrection or when the pollution was caused

[44] Ibid, Article 28(4).
[45] Ibid. *See* Article 3.
[46] Ibid. *See* Article 4(1)
[47] Ibid. *See* Article 4 (2) (b).

by a warship, a non-commercial state-owned ship, or where the claimant cannot prove that the pollution damage resulted from an incident involving one or more ships.[48] Additionally, the compensation may be discharged wholly or partially if the oil pollution damage was caused as a result of the claimant's negligence.[49]

3.3.2. Contributions Under the 1992 Fund Convention

In accordance with Article 10(1) of the 1992 Fund Convention, the IOPC Fund is financed by contributions levied on any person (including government authorities, State-owned companies, or private companies) who has received in one calendar year more than 150,000 tonnes of crude oil and/or heavy fuel oil, i.e. "contributing oil" to a Member State of the 1992 Fund. Nevertheless, to be considered as 'contributing oil', the oil must be carried by sea to the ports or terminal installations in that State.

Moreover, in order for contribution amounts to be calculated, the Convention requires the contracting States to submit a report to the 1992 IOPC Fund on persons receiving more than 150.000 tons of oil annually and the relevant quantities of oil received. Consequently, annual contributions are levied by the 1992 IOPC Fund, and each contributor will be required to pay a specified amount per tonne of "contributing oil" received through a system of deferred invoicing, whereby part of the annual contributions levied for a given calendar year are invoiced later in the year.

3.3.3. International Oil Pollution Compensation Fund (IOPC)

The IOPC regime was created by two international treaties that were established under the auspices of the International Convention on Civil Liability for Oil Pollution Damage, 1992 (1992 Civil Liability Convention) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (1992 Fund Convention).

The Fund acts within the objectives stated under Article 235 (paragraphs 2 and 3) of the United Nations Convention on the Law of the Sea (UNCLOS). Meaning that the Fund aims to ensure that recourse is available in accordance with the legal systems of Member States for prompt and adequate compensation in respect of damage caused by the pollution of the marine environment. Furthermore,

[48] Ibid. *See* Article 4, (2) (a) and (b).
[49] Ibid. *See* Article 4, (3).

the Fund also seeks to facilitate the implementation of existing international law and the further development of international law relating to responsibility and liability for the assessment of and compensation for damage.

In achieving the above-mentioned objectives, the IOPC Fund's Secretariat is responsible for handling compensation claims, the collection of contributions that are due under this Convention, taking all appropriate measures for dealing with claims against the Fund as well as undertaking a wide variety of activities aimed at encouraging the worldwide adoption and understanding of the international regime for oil pollution compensation.

Since its establishment, under both the 1992 Fund Convention and the preceding 1971 Fund Convention, the Fund has been involved in over 150 incidents of varying sizes all over the world and has paid some £740 million (USD 931 million) in compensation.[50]

3.4. The 2003 Supplementary Fund Protocol

3.4.1. Scope of the Supplementary Fund Protocol

As the main purpose of the 2003 Supplementary Fund Protocol is to pay additional compensation, it only provides compensation for an "established claim".[51] As such, "*when the total damage exceeds, or there is a risk that it will exceed*," the applicable limit of compensation provided by the 1992 Fund Convention, the Supplementary IOPC Fund will provide compensation for the established claim. Therefore, in order for compensation to be made under the 2003 supplementary Fund Protocol, there must be an established claim and there must be a final or temporary decision by the 1992 IOPC Assembly that payment will be made only for a portion of the established claim.

Furthermore, given that the Supplementary IOPC Fund will only be liable in respect of an established claim, there are no further provisions on exemptions or exclusions from liability under the Supplementary Fund Protocol.

[50] Report by the International Oil Pollution Compensation Funds to the Division for Ocean Affairs and the Law of the Sea, (June 2020), https://www.un.org/depts/los//general_assembly/contributions_2020/IOPCFunds.pdf. Accessed on 30 December 2020

[51] The 2003 Supplementary Fund Protocol (n 6). *See* Article, Paragraph 8. '***Established claim*s**' are those that have been recognised by the 1992 IOPC Fund or have been accepted as admissible by a decision of a competent Court binding upon the 1992 IOPC Fund, which would have been fully compensated if the limits of limitation in the 1992 Fund Convention had not been applied to that incident.

It is important to also note that compensation will not be paid by the Supplementary IOPC Fund until the reporting obligations of the Contracting State relating to oil receipts under Article 13(1) and Article 15(1) have been complied with. In this respect, the Contracting State is expected to have fulfilled its reporting obligations for all years prior to the occurrence of the incident for it to be eligible for compensation. However, where compensation has been denied temporarily, it will be denied permanently in respect of that incident if the reporting obligations have not been complied with within one year after the Director of the Supplementary IOPC Fund has notified the Contracting State of its failure to report.

3.4.2. Contributions to the Supplementary Fund Protocol

Similarly, the 2003 Supplementary Fund Protocol is also financed by contributions payable by State Parties receiving oil in excess of 150,000 mt. However, the Protocol adopted contribution mechanisms that are different from the 1992 Fund Convention.[52] Firstly, State Parties are deemed to receive at least 1 million mt of "contributing oil" each year. Secondly, where the aggregate amount of "contributing oil" received in a Contracting State is less than 1 million mt, the amount of contributions payable in respect of the contributing oil received in any single State in a calendar year should not exceed 20 percent of the total contributions levied.[53] This is a temporary measure until the total amount of contributing oil received in States which are party to the Supplementary Fund reaches 1,000 million tonnes or for a period of 10 years from the date of entry into force, whichever of which occurs the earliest.[54]

4. Jurisdiction

In the 1992 CLC, 1992 Fund Convention and the 2003 Supplementary Fund Protocol, Courts of the Contracting State to the Conventions in whose territory, territorial sea or EEZ or equivalent area the damage occurred can assume jurisdiction in actions against the owner or the fund for compensation for oil pollution damage. To that end, a United States district court, in *Reino de España v. The American Bureau of Shipping* – The "Prestige", held that a court of the United States has no jurisdiction to hear a claim of Spain against a United States company allegedly liable for such pollution

[52] Ibid.
[53] Ibid. *See* Article 18.
[54] A Guide to International Conventions on Liability and Compensation for Oil Pollution Damage, (n.26).

damage.[55]

Therefore, State Courts should be given the requisite jurisdiction to handle such matters by the national legislation. In addition, a decision of a competent court in a Contracting State must be recognized and enforced by the courts of other Contracting States unless the judgement was obtained by fraud or the defendant was not given either reasonable notice or a fair opportunity to present their case.[56]

The additional provisions that are found in the 1992 Fund Convention are the rules regarding the effect of judgements on the Fund, the recognition and enforcement of judgements, and rights of recourse and subrogation.[57] Once a limitation fund has been constituted in a particular Contracting State in accordance with the 1992 CLC, the courts of that State shall be exclusively competent to determine all matters relating to the apportionment and distribution of the fund.[58]

5. Time Limit

Similar to the above stated jurisdictional requirements, the 1992 CLC, the 1992 Fund Convention and the 2003 Supplementary Fund Protocol provide the same rules for time limit in which actions for compensation must be brought. As a general rule, under the Convention, an action must be brought within three years from the date when the damage was suffered. However, in no case can actions be brought after six years from the date of the incident which caused the damage.

Available Compensation under the 1969 CLC, 1992 CLC Protocol, 1992 Fund Convention and the 2003 Supplementary Fund Protocol.

Tanker size (Gross Tonnage)	**1969 CLC as amended**	**1992 CLC (Post 2003)**	**1992 Fund Convention (Post 2003) *****	**2003 Supplementary Fund Protocol (post 2003) ******
5, 000	0,665	4,510 SDR	203 SDR	750 SDR

[55] United States District Court – Southern District of New York, January 2, 2008, reported at CMI, available at http://www.comitemaritime.org/jurisp/ju_clc.html
[56] The 1992 CLC Protocol (n 3). *See* Article 9, 10 and the 1992 Fund Convention (n 5). *See* Article 7, 8
[57] The 1992 Fund Convention (n 5). *See* Article 9
[58] The 1992 CLC (n 3). *See* Article 9 (3)

10,000	1,33	7,665 SDR	203 SDR	750 SDR
50,000	6,65	32,905 SDR	203 SDR	750 SDR
100,000	13,3	64,455 SDR	203 SDR	750 SDR
140,000	14	89,695 SDR	203 SDR	750 SDR
150,000	14	89,770 SDR	203 SDR	750 SDR
200,000	14	89,770 SDR	203 SDR	750 SDR

*** Maximum amount, including compensation paid under 1992 CLC.

**** Maximum amount, including compensation paid under the 1992 CLC and 1992 Fund Convention. gt = gross tonnage.

SDR = Special Drawing Right. The relevant unit of account is the Special Drawing Right (SDR) as defined by the International Monetary Fund. As at 3 January 2012, the relevant exchange rate is **1 SDR = US$1.542930**.

Source: United Nations Conference on Trade and Development (UNCTAD), Studies in Transport Law and Policy - 2012 No. 1 https://unctad.org/system/files/official-document/dtltlb20114_en.pdf,

6. The Importance of Adopting the Model Law and its Relevance to African Union Member States

Besides the various factors that contribute to the pollution of the marine environment, oil pollution takes a prominent role. Throughout history, there have been a number of big oil tanker disasters, both by volume of oil released and by the impact on the marine environment. For example, between 1970 to 2019, approximately 5.86 million tonnes of oil were lost due to tanker incidents.[59] However, pollution through tanker accidents has been on the decline during the last 40 years.

Nevertheless, even if the amount of oil spilled from tanker incidents has reduced by 95% since the 1970s,[60] if one looks into previous trends of oil transportation, it is evident that the transportation of oil via tanker vessel transportation continues to grow due to the growing demand for energy. Therefore, besides the decrease in the incidents causing pollution damage, it is clear to understand that the sea is at a bigger risk today than it was in the 1970s given the growing energy demand. In fact, in its 2018 review of Maritime Transport, the United Nations Conference on Trade and Development (UNCTAD)

[59] Oil Tanker Spill Statistics (2019), International Tanker Owners Pollution Federation Limited (ITOPF), https://www.itopf.org/fileadmin/data/Documents/Company_Lit/Oil_Spill_Stats_brochure_2020_for_web.pdf . Accessed on 1 January 2021.
[60] Ibid.

concluded that out of the world's fleet in 2018, by share of both dead-weight tonnage, and principal vessel type, 29% of said fleet were oil tankers.

It is important to also bear in mind that, despite the declining rate of oil tanker accidents, when oil pollution damage does occur, it has the ability to cause long-lasting effects that could go on for years. Depending on the quantity and type of oil, how the oil interacts with the marine environment as well as the weather condition, the impact of the damage could be aggravated and have an enduring and detrimental effect on coastal communities. Furthermore, given that 80% of tanker oil spills occurred within 10 nautical miles offshore,[61] the coastal livelihood within such communities will also be majorly affected. Therefore, it is imperative that Member States of the African Union adopt those instruments that not only ensure that victims of oil pollution incidents are adequately compensated for their losses but those that also clearly set the criterion for incurring liability. It was because of these considerations that the 1992 CLC, the 1992 Fund Convention and the 2003 Supplementary Fund Protocol were adopted under the auspices of the IMO.

Whilst the 1992 CLC and the 1992 Fund Convention are widely adopted by African Union Member States, there are States that are not a State Party to the conventions even though they may face exposure to oil pollution from tankers. For example, although there are 38 coastal African States with economies that heavily dependent on income from fisheries and tourism, only 28 of them have ratified both the 1992 CLC and the 1992 Fund Convention[62] and only two countries are State Parties to the 2003 Supplementary Fund Protocol.[63] The aggregated population of the 10 coastal countries that are not State Parties to the Conventions is 190 million, amounting to 15.83% of the total population of Africa.

Nevertheless, these countries that are not State Parties to the Conventions may greatly benefit from them and can be protected from those financial consequences that stem from a possible tanker oil spill. That is because, under both the 1992 CLC and the 1992 Fund Convention, despite the flag of the tanker, the place where the incident occurred, or the ownership of the oil, compensation for economic losses, costs incurred as a result of any preventive measures taken or in respect of reasonable measures to restore the environment is available for countries, private companies as well as individuals. In

[61] Ibid.
[62] Statues of Conventions – Ratification by states, the IMO International Maritime Law Institute – From the coastal states that are not a state party to the 1992 CLC Convention and 1992 Fund Convention; Guinea Bissau (1.874 million), Togo (7.889 million), Democratic republic of Congo (DRC) (84.07 million), Madagascar (27,691,018), Somalia (15,893,222), Eritrea (3,546,421) and Sudan (43,849,260). However, Equatorial Guinea (1,402,985), Libya (6,871,292) and Sao Tome and Principe (219,159) are State Parties to the 1969 CLC. In addition, Egypt is only a state party to the 1992 CLC Protocol.
[63] Ibid. These two countries are Congo and Morocco.

regards to the territorial limit in which the oil pollution damage occurred, the 1992 CLC, extends the limit beyond the territory or the territorial waters of a Contracting State, to oil pollution damage suffered in the Exclusive Economic Zone or equivalent area of a Contracting State.

Also, States should note that they are at a greater advantage as the 1992 CLC Protocol does not subject States to any financial obligations. Similarly, the 1992 Fund Convention does not put financial burden on States whose annual receipts of oil are in less than 150,000 mt. That being the financial obligation required from States, the available compensation for victims of oil pollution under the 1969 CLC is limited to the maximum amount (depending on ship size, up to 14 million SDR), per incident. Moreover, given that the 1971 Fund Convention has ceased to have effect, countries that only ratified the 1969 CLC and 1971 Fund Convention cannot benefit from the latter, as both the 1969 CLC and the 1971 Fund Convention are intended to work simultaneously. Therefore, States Parties to the 1969 CLC should also ratify the 1992 CLC Protocol and Fund Convention in order to be covered for a second-tier compensation.

Similarly, States that are only a party to the 1992 CLC will only benefit from the first-tier compensation (the maximum amount, depending upon the ship's size, being 89,770 units of account). However, if States are also a party to the 1992 Fund Convention, they can be covered under the circumstances where a ship owner is exempted from liability in accordance to the exceptions provided under the 1992 CLC.[64] Hence, States with a receipt of oil under 150.000 mt will greatly benefit, as they will not have any financial obligation and will therefore be provided with compensation even if the incident occurred under exceptional circumstances.

Moreover, if States are a party to the 2003 Supplementary Fund Protocol, they will be provided with the highest compensation coverage. Nevertheless, unlike the other instruments, the 2003 Supplementary Fund Protocol is associated with some financial burdens, as all Contracting States are deemed to receive at least 1 million mt of "contributing oil" annually or "oil received in any single State in a calendar year should not exceed 20 per cent of the total contributions". Consequently, if Member States with annual receipts of "contributing oil" below 1 million mt accede to the 2003 Supplementary Fund Protocol, they will be exposed to financial exposure corresponding to pro rata contributions equivalent to 1 million mt of "contributing oil" receipts.[65]

[64] The 1992 CLC Protocol (n. 3).
[65] A Guide to International Conventions on Liability and Compensation for Oil Pollution Damage. (n. 26).

7. Oil Pollution Damage and the African Union Policies

Sustainable development is defined under international law as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."[66] As such, sustainable development is stipulated as one of the aspirations for the "Africa we want" under the AU Agenda 2063.[67] However, the damage caused as a result of an oil spill is highly dependent upon the closeness to the shoreline and vulnerability of the area which makes it unpredictable. Additionally, oil damage brings devastating and sometimes irreversible and long-lasting damage to the ecosystem as well as coastal community, which derogates from the principle of sustainable development. Therefore, States need to adopt a mechanism to make the polluter liable and to provide a means to pay victims of oil pollution adequate compensation for economic and pecuniary losses. Thus, the model law facilitates States with the necessary means to domesticate the relevant Conventions into their national law.

Furthermore, given that one of the guiding objectives of the 2050 AIM Strategy[68] is the protection of populations from maritime pollution, the model law is a means to achieve this objective. To that end, the African Commission on Human and Peoples' Rights (the Commission) also stated that the oil incident that occurred on the South East Coast of Mauritania island carries serious, immediate and potential risks to various human and peoples' rights. Furthermore, the Commission in its communique[69] recalled the Commission's State Reporting Guidelines and Principles on Article 21 and 24 of the African Charter relating to extractive industries and the environment. After which, the Commission evoked once again that *"states take steps to make sure that the enjoyment of the rights guaranteed by the Charter is not interfered with by any other private person including by protecting their citizens from damaging acts that may be perpetrated by private parties, and in particular, to take reasonable decisions and other measures to prevent pollution and ecological degradation."*[70]

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[66] The United Nations World Commission on Environment and Development Report (the Brundtland Report) *Our Common Future* (OUP 1987).

[67] Au Agenda 2063, 'The Africa We Want', (2015) https://au.int/sites/default/files/documents/36204-doc-agenda2063_popular_version_en.pdf, accessed on 4 January 2021.

[68] 2050 African Integrated Maritime Strategy, https://au.int/en/documents-38

[69] Press Statement on Oil Spill and the Environmental Pollution Affecting the Republic of Mauritius (2020) https://www.achpr.org/pressrelease/detail?id=526. Accessed on January 13 2021.

[70] State Responsibility Guidelines and Principles on Articles 21 and 24 of the African Charter Relating to Extractive Industries, Human Rights and the Environment (2016) ACHPR/Res. 364(LIX) https://www.achpr.org/public/Document/file/English/Articles%2021%20&%2024%20State%20Reporting%20Guidelines.pdf. Accessed on 13 January 2021.

Hence, besides creating legal uniformity, Member States will also be contributing to the achievement of the Union's objectives as well as safeguarding their citizen's human rights when using this model law and adopting the Conventions into their domestic laws.

8. Adoption of the AU Model Law

To increase the involvement of relevant stakeholders in the process, the draft AU Model law will be submitted to members of the African Union Commission on International Law[71] (AUCIL), and most of the relevant personalities and institutions with the relevant experience, expertise and mandate to protecting the marine environment at both the regional and international levels. Following such contributions, the revisions and comments to the model law will be circulated electronically and the AUCIL will conduct its first reading of the Preliminary Report and the Draft AU Model Law during its Ordinary Session.

After presenting the revised report and the model law, Members of AUCIL will provide comments on the text and support its revision until the submission of the final draft. Subsequently, in addition to the comments received by the AUCIL members, Member States of the African Union, AU Organs and AU Partners will be invited to comment on these draft articles and respond to the questioner. The drafter will then consider the revised model law, including comments from Member States, and integrate the comments in the text of the draft model law.

It is important to note that the drafter will endeavour to only incorporate the various comments from Representatives of Member States and Members of the AUCIL in as much as these comments are specific and consistent with the 1992 CLC and 1992 Fund Convention. Following the incorporation of said comments, the revised AU Model Law will be transferred to the Specialized Technical Committee on Legal Affairs to later be submitted to the Executive Council. Finally, after the approval of the Executive Council, the Draft AU Model Law will be submitted to the African Union Heads of States (the Assembly) for a final endorsement.

[71] *See.* https://au.int/en/documents/20170210/introduction-african-union-commission-international-law

9. Implementation Under the AU Model Law

The 1992 CLC and the 1992 Fund Conventions are particularly important for Member States, as the Conventions provide a comprehensive victim protection mechanism under the international regime of liability and compensation for oil pollution damage. As such, the aim of the proposed AU draft model law is to support Member States in adopting a legal framework that will enable victims of pollution damages to get sufficient compensation and to redress losses incurred as a result of preventive measures.

In light of this, the AU Model Law is framed as an 'Act' in order to serve as a 'ready- made' example that could constitute the basis for national legislation in regulating not only liability but also compensation for oil pollution damage. However, a State may change this formation in line with its national system by using, for example, an 'Edict', 'Law' or 'Code'. In drafting the AU model law, apart from adding implementing provisions, the wording of the Act is fully adopted from the 1992 CLC and 1992 Fund Conventions.

The proposed Act applies to the pollution damages caused by spills of persistent oil carried by seagoing ships as cargo or the bunkers of those ships which actually carry oil in bulk as cargo. The proposed Act also applies to the costs incurred for those measures that seek to prevent or minimize pollution damage. In terms of geographical application, the Act will apply in the territory, territorial sea, the EEZ or the equivalent area of a Contracting State to the relevant legal instrument.

Therefore, the AU draft Model Law contains four parts. The first part covers preliminary provisions including the interpretation of those terms used in the model law, the extent of its application as well as its jurisdiction. This part also includes a denouncing provision, as State Parties to the 1969 CLC are required to denounce the Convention upon ratifying the 1992 CLC.

After building the bases for the Act in the first part, the second part of the Act incorporates provisions dealing with civil liability for oil pollution damage. In this part, the circumstances in which the ship owner is liable for oil spills originating from the ship and the very few exceptions to the type of strict liability that is imposed on the ship owner are addressed. Furthermore, this part provides the maximum limit of liability in accordance with the tonnage of the ship, which is applicable only if the ship owner is not at fault and follows the procedure for the limitation action. The other major factor incorporated under part two is compulsory insurance, which is required for ships carrying more than 2,000 tons of oil in bulk as cargo and the issuance of certificate of insurance by national authorities.

Subsequently, the third part encompasses compensation for victims exceeding the compensation limit from liability charges against ship owners; which is applicable when ship owners are incapable of paying for damages and when a State Party receives no compensation for pollution damage as per the 1992 CLC. In addition, this part of the Act also regulates the required Fund contribution from any person who in the calendar year has received a total quantity of oil exceeding 150,000 tons, the responsibility of the national authorities to give a list of such receivers as well as the contribution that needs to be made by such a receiver. Moreover, this part lays out the circumstances in which the Fund gets exempted from liability, the monetary limit of liability and the maximum amount of compensation allowed from the IOPC Fund.

Lastly, the fourth part includes miscellaneous provisions that will assist States in the enforcement of the Act.

10. Means to Ensure Compliance and Effective Implementation

Subsequent to the adoption of the model law by the AU Assembly, the final version of the model law will be accessible for Member States. Member States will be given three options to either adopt the Model Law as it is, adapt it or adopt it as a whole or in part. Whatever the manner in which a State decides to utilise the Model Law, efforts will be made to ensure that in the process of adopting or reviewing national legislation on liability and compensation for oil pollution damage, the principles and objectives of the Convention are considered.

In this regard, the Office of the Legal Counsel (OLC) in consultation with the AUCIL will work towards advocating the model law to priority States with exposure to oil pollution damage. This task will adhere with situational analyses and technical assistance. The OLC will provide the technical assistance whether the Member States choose to adopt the Model Law as it is or adapt it.

Moreover, given that the target is to encourage and facilitate the ratification of the conventions governing the liability and compensation for oil pollution regime by all the coastal states of the Africa, the AUCIL will develop regional road map for the implementation of the model law. In doing this, the AUCIL will be in collaboration with Regional Economic Communities[72] (RECs), so that there could be harmonization of regulations within the Member States of the RECs.

[72] *See* https://au.int/en/organs/recs

AFRICAN UNION MODEL LAW FOR THE INCORPORATION OF THE INTERNATIONAL CIVIL LIABILITY AND COMPENSATION REGIME FOR OIL POLLUTION DAMAGE

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Preamble

Recalling the African Union Agenda 2063 which promotes for the aspiration of sustainable development in the continent and the protection of populations from maritime pollution as one of objectives of the 2050 African Integrated Maritime Strategy (2050 AIMs);

Recognising the devastating harms of oil pollution damage brings and the irreversible damage it can cause to the ecosystem with a long lasting effect on the coastal community, which derogates from the principle of sustainable development;

Conscious that the adoption of a model law on liability and compensation for oil pollution damage is essential to the fulfilment of the mandate of the African Commission to realise the aspirations of its Member;

Welcoming the fact that some Member States have adopted, or are in the process of adopting, the International Maritime Organization (IMO) international legal instruments relating to liability and compensation for oil pollution damage;

Committed to achieve the African Union's objectives as well as safeguarding the citizen's human rights by assisting African States in formulating, adopting or reviewing national legislations on liability and compensation for oil pollution damage and to create unification of international maritime law instruments;

Hereby formulates the following model law on liability and compensation for oil pollution damage as a guide for the development, adoption or review of liability and compensation for oil pollution damage legislation by African States.

PART I – PRELIMINARY

Article 1 - Citation

This legislation shall be cited as **[add the title given to the legislation, e.g. "the Civil Liability and Compensation for Oil Pollution Act."**[73]

Article 2 – General Interpretation

1. For the purpose of this Act**:**

"the Act" means the **[add reference to the title of the Act or regulation, in that case the Act under which the regulations are enacted]"**

"Authority"[74] means;

"Enforcement and Compliance Officer"[75] means

"foreign" Means**:**

a) in relation to a ship, a ship registered under a law of a country other than … **[add country]**; and

b) in relation to a country, a country other than **[add country]**;

"Government" means the government of **[add country]**

"Government ship" means any warship and any other ship for the time being used by the government of any State for other than commercial purposes;

"incident" means any occurrence, or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage;

"Liability Convention country" means a country to which the Liability Convention applies;

"oil" means 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;

"organization" means the International Maritime Organization;

"owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "owner" shall mean such company.

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[73] States may choose different titles for their legislations depending on their practices.
[74] The designated authority by State adapting the Model Law
[75] The State adapting the Model Law may define the term or make a reference to existing national legislation.

"persistent oil" includes crude oil, heavy diesel oil, fuel oil, lubricating oil and whale oil, whether carried on board a ship as cargo or in the bunkers of a ship;

"person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.

"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.

"preventive measures" means any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage;

"Secretary-General" means the Secretary-General of the Organization;

"ship" means any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard;

"ship's tonnage" shall be the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969;

"special drawing rights" means units of account used by the International Monetary Fund and known as special drawing rights;

"tonnage" means a ship's gross tonnage calculated in accordance with the regulations in Annex 1 of the International Convention on Tonnage Measurement of Ships 1969.

"unit of account" means the special drawing rights as defined by the International Monetary Fund;

"1969 Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1969.

"1992 Liability Convention" means the the Protocol of 1992 to amend the 1969 Liability Convention International Convention on Civil Liability for Oil Pollution Damage.

2. Unless otherwise defined in the Act, or unless the context so requires, words and expressions used in these Act shall have the same meaning assigned to them in the Liability Convention and Fund Convention. Any reference in these regulations to an international convention or its

related protocol or code shall include reference to any amendment to such convention, protocol or code accepted by the Government of **[add country]**.

3. Any references to the territory of **[add country]** include the territorial sea and exclusive economic zone of **[add country]** and references to the territory of any other country include the territorial sea and exclusive economic zone of that country;

4. Any references to the exclusive economic zone of **[add country]** are references to the exclusive economic zone of that **[add country]** established in accordance with international law or, if such a zone has not been established, such area adjacent to the territorial sea of that country and extending not more than 200 nautical miles from the baselines from which the breadth of that sea is measured;

5. Any references to a discharge or escape of oil from a ship are references to such a discharge or escape wherever it may occur and whether it is of oil carried in a cargo tanker or of oil carried in a bunker fuel tank; and

6. In relation to any damage or cost resulting from the discharge of oil carried in a ship, references in this Act to the owner of the ship are references to the owner at the time of the occurrence, or the first of the occurrences, resulting in the discharge.

7. Where more than one discharge or escape results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one; but any measures taken after the first of them shall be deemed to have been taken after the discharge or escape.

8. Any expression to the masculine gender includes the feminine.

Article 3 - Accession of the Fund Convention and the Liability Convention

For the purposes of any law thereto applicable the Government of **[add country]** is hereby authorised to accede to the 1992 Fund Protocol and the 1992 Liability Protocol and to denounce the 1969 Liability Convention thus becoming a party to the the Liability Convention and Fund Convention.

Article 4 – Application

This Act shall apply to:

a) to pollution damage caused:
    i. in the territory, including the territorial sea, of **[add country]**, and
    ii. in the exclusive economic zone of **[add country]** or in an area beyond and adjacent to the territorial sea of **[add country].**[76]
b) to preventive measures, wherever taken, to prevent or minimize such damage.[77]

PART II – CIVIL LIABILITY FOR OIL POLLUTION DAMAGE

Article 4 – Interpretation

1. For the purpose of this part:

''Liability Convention'' means the Liability Convention as amended by the 1992 Liability Protocol known as the International Convention on Civil Liability for Oil Pollution Damage, 1992 adopted at London on the 27th November, 1992.
"State of the ship's registry" means in relation to registered ships the State of registration of the ship, and in relation to unregistered ships the State whose flag the ship is flying.

2. Where any action is being brought in **[add country]** in terms of the provisions of this part any reference to "the Court", shall in each case be read and construed as reference to the **[add the competent Court].**

3. **[add the competent Court]** shall determine the distribution of the limitation fund, and where such fund is insufficient to satisfy the claims of those who are entitled to compensation, the amount of compensation of each claimant shall be reduced *pro rata*.

Article 5 - Liability for oil Pollution

1. Except as provided in paragraphs 2 and 3 of this Article, the owner of a ship at the time of an incident, or, where the incident consists of a series of occurrences, at the time of the first such

[76] The second option will be applicable if the Member State adopting the AU Model law has not established such a zone.
[77] The country adopting the instrument may make a specific reference to the legislation that regulates the procedure of such claims.
The Country may also include a provision that gives the competent authority the legitimacy to adopt a regulation stating that the provisions of this Act shall also apply to such exclusive economic zone or such similar area as may be established in such Order where any such exclusive economic zone or any such similar area has been established by **[add country]**.

occurrence, shall be liable for any pollution damage caused by the ship as a result of the incident.

2. No liability for pollution damage shall attach to the owner if he proves that the damage:

a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character, or

b) was wholly caused by an act or omission done with intent to cause damage by a third party, or

c) 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.

3. If the owner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from his liability to such person.

4. No claim for compensation for pollution damage may be made against the owner otherwise than in accordance with this Act. Subject to paragraph 5 of this Article, no claim for compensation for pollution damage under this Act or otherwise may be made against:

a) the servants or agents of the owner or the members of the crew;

b) the pilot or any other person who, without being a member of the crew, performs services for the ship;

c) any charterer (how so ever described, including a bareboat charterer), manager or operator of the ship;

d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;

e) any person taking preventive measures;

f) all servants or agents of persons mentioned in subparagraphs (c), (d) and (e);

unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

5. Nothing in this Act shall prejudice any right of recourse of the owner against third parties.

Article 6 – Incident involving two or more ships

When an incident involving two or more ships occurs and pollution damage results there from, the owners of all the ships concerned, unless exonerated under Article 5, shall be jointly and severally liable for all such damage which is not reasonably separable.

Article 7 - Limitation of liability

1. The owner of a ship shall be entitled to limit his liability under this Act in respect of any one incident to an aggregate amount calculated as follows:
    a) 4,510,000 units of account[2] for a ship not exceeding 5,000 units of tonnage;
    b) for a ship with a tonnage in excess thereof, for each additional unit of tonnage, 631 units of account[2] in addition to the amount mentioned in sub-paragraph (a);

provided, however, that this aggregate amount shall not in any event exceed 89,770,000 units of account[2].

2. The owner shall not be entitled to limit his liability under this Act if it is proved that the pollution damage resulted from the owner's personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

Article 8- Limitation Actions

1. For the purpose of availing herself of the benefit of limitation provided for in Article 7 the owner shall constitute for the total sum representing the limit of his liability with **[the competent court]**.

2. The constitution by the ship owner of a limitation fund in a foreign Court in a Liability Convention country will have the same effect as regards the owner's right to limitation of liability as if the fund were constituted at a **[add country]** Court.[78]

[78] Under the circumstances where no action is brought, with any Court or other competent authority in any one of the Contracting States, the State using this instrument may add an additional provision regulating the depositing of the sum or producing a bank guarantee or other guarantee, acceptable under the legislation of the State where the fund is constituted, and considered to be adequate by the Court or other competent authority.

3. Once the fund has been constituted, the owner or an injured party may bring a limitation action to determine liability and bring about the distribution of the liability amount.

4. If on such an application the court finds that the applicant has incurred such a liability and is entitled to limit it, the court shall determine the limit of the liability and direct payment into court of the amount of that limit, and shall then -
    a) determine the amounts that would, apart from the limit, be due in respect of the liability to the several persons making claims in the proceedings under this section; and
    b) direct the distribution of the amount paid into court (or, as the case may be, so much of it as does not exceed the liability) among those persons in proportion to their claims, subject to the following provisions of this section.

5. Claims relating to reasonable expenses incurred voluntarily by the owner or insurer or by a person who has or is alleged to have incurred liability as a result of measures undertaken following an occurrence to prevent or limit pollution damage, shall rank equally with other claims against the fund.

6. A payment into Court of the amount of a limit determined under this article shall be made in … **[add Currency]**.
    a) For the purpose of converting such an amount from special drawing rights into **[add currency]** the the **[add the competent national monetary authority]** may certify, in **[add currency]**, the respective amounts which are to be taken as equivalent for a particular day to the sums expressed in special drawing rights in Article 8;
    b) a certificate signed by or on behalf of the **[add the competent national monetary authority]** under paragraph (a) shall be conclusive evidence of the matters contained therein and shall in legal proceedings under this Act to which it relates be admissible on its production and without further proof.
    c) No claim shall be admitted in proceedings under this provision unless it is made within such time as the Court may direct or such further time as the Court may allow.
    d) Where any sum has been paid in or towards satisfaction of any claim in respect of the pollution damage to which the liability referred to in paragraph (1) extends,

        i. by the owner or the person referred as “the insurer”; or

ii. by a person who has or is alleged to have incurred a liability, otherwise than under Article 7, for that damage.

the person who paid the sum shall, to the extent of that sum, be in the same position with respect to any distribution made in proceedings under this provision as the person to whom it was paid would, apart from this subparagraph, have been, and the distribution shall be made accordingly.

7. Where the owner who incurred the liability referred to in paragraph (1) has voluntarily made any reasonable sacrifice or taken any other reasonable measures to prevent or reduce pollution damage to which the liability extends or might have extended he shall be in the same position with respect to any distribution made in proceedings under this section as if he had established a claim in respect of the liability for an amount equal to the cost of the sacrifice or other measures, and the distribution shall be made accordingly.

8. The court may, if it thinks fit, postpone the distribution of such part of the amount to be distributed as it deems appropriate having regard to any claims that may later be established before a court outside **[add country].**

Article 9 - Restriction on enforcement of claims after establishment of limitation fund

1. Where the owner, after an incident, has constituted a fund in accordance with Article 7, and is entitled to limit his liability,
    a) no person having a claim for pollution damage arising out of that incident shall be entitled to exercise any right against any other assets of the owner in respect of such claim;
    b) **[add competent national authority]** of **[add country]** shall order the release of any ship or other property belonging to the owner which has been arrested in respect of a claim for pollution damage arising out of that incident, and shall similarly release any bail or other security furnished to avoid such arrest.

2. The foregoing shall, however, only apply if the claimant has access to the Court administering the fund and the fund is actually available in respect of his claim.

Article 10 - Compulsory Insurance

1. The owner of a ship registered in **[add country]** and carrying more than 2,000 tons of oil in

bulk as cargo shall be required to maintain insurance or other financial security, such as the guarantee of a bank or a certificate delivered by an international compensation fund, in the sums fixed by applying the limits of liability prescribed in paragraph 1 of Article 7 to cover his liability for pollution damage under this Act.

2. A certificate attesting that insurance or other financial security is in force in accordance with the provisions of these Act shall be issued by the Authority to each ship after the **[add competent national authority]** has determined, in accordance with paragraph 1 of Article 16, that the requirements of paragraph (1) have been complied with.

3. The certificate shall be in the **[add official language]**. If the language used is neither English nor French, the text shall include a translation into one of these languages.

4. An insurance or other financial security shall not satisfy the requirements of this article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2 of this article, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 4 of this article, unless the certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this Article.

5. Paragraph 5 shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this regulation.

6. The **[add competent national authority]** may at any time request consultation with the issuing or certifying authority or State should it believe that the insurer or guarantor named in the insurance certificate is not financially capable of meeting the obligations imposed by these Regulations.

7. Nothing in these Regulations shall be construed as preventing the **[add competent national authority]** from relying on information obtained from other States or the Organization or other international organizations relating to the financial standing of providers of insurance or financial security for the purposes of this regulation. In such cases, the **[add competent**

national authority] in relying on such information is not relieved of its responsibility as a State issuing the certificate required by paragraph 2.

Article 11 – Delegation of Authority

1. The Authority may authorize either an institution or an organization recognized by it to issue the certificate referred to in paragraph 2 of Article 10 on terms and conditions as it deems fit.
2. Such institution or organization shall inform the Authority of the issue of each certificate.
3. In all cases, the Authority shall fully guarantee the completeness and accuracy of the certificate so issued and shall undertake to ensure the necessary arrangements to satisfy this obligation.
4. The institution or organization authorized to issue certificates in accordance with this Act shall, as a minimum, be authorized to withdraw these certificates if the conditions under which they have been issued are not maintained.
5. In accordance with paragraph 4, the institution or organization shall report such withdrawal to the Authority.

Article 12 – Ships Registered [add country] or Foreign Ship and Insurance Certificates

1. **[add country]** ship or a ship shall not enter or depart or attempt to enter or depart –
    a) a port in **[add country]**; or
    b) an offshore facility in its archipelagic waters or territorial sea;

   if the ship does not have on board an insurance certificate issued under paragraph 1 of Article 15.
2. A person commits an offence under paragraph 1 if –
    a) the person is the registered owner or master of a ship; and
    b) at the time the ship is in operation, the ship does not have on board an appropriate insurance certificate for the ship, that is in force.
3. An offence under paragraph 2 is an offence of strict liability and any persons referred to in paragraph 1 (a) is liable upon conviction –

    a) in the case of the registered owner, —
        i. if an individual, to a fine not exceeding **[add amount]** or imprisonment for a term not exceeding **[add time limit]**, or both;
        ii. if a corporate body, to a fine not exceeding **[add amount]**; or
    b) in the case of a master, to a fine not exceeding **[add amount]** or imprisonment for a term not exceeding **[add time limit],** or both.

4. Paragraph 2 does not apply if –

    a) an appropriate insurance certificate for the ship is in force at the time referred to in paragraph 2 (1) (b); and
    b) the issuer of the certificate has notified the **[add competent national authority]** that it maintains records in an electronic form that attest to the existence of the certificate; and the records are accessible to all Contracting States.

5. A foreign ship or a ship shall not enter or depart or attempt to enter or depart –
    a) a port in **[add country]**; or
    b) an offshore facility in the archipelagic waters or the territorial sea of **[add country];**

if the ship does not have on board an insurance certificate complying with the particulars of Article 16 and showing that there is in force in respect of the ship a contract of insurance or other financial security in accordance with the provisions of paragraph 3 of Article 7.

6. A person commits an offence under paragraph 5 if –
    a) the person is the registered owner or master of a ship; and
    b) the ship –
        i. enters or departs a port in **[add country]**; or
        ii. arrives at or departs an offshore facility in the archipelagic waters or the territorial sea of **[add country]**; and
    c) the ship does not have on board an appropriate insurance certificate for the ship, that is in force.
7. An offence under paragraph 6 is an offence of strict liability and any persons referred to in paragraph 6 (1) (a) is liable upon conviction –
    a) in the case of a registered owner,

i. if an individual, to a fine not exceeding **[add amount]** or imprisonment for a term not exceeding **[add time limit],** or both;

ii. if a corporate body, to a fine not exceeding **[add amount]**; or

    b) in the case of a master, to a fine not exceeding **[add amount]** or imprisonment for a term not exceeding **[add time limit]**, or both.

8. Paragraph 6 does not apply if –
    a) an appropriate insurance certificate for the ship is in force at the time referred to in

paragraph 6 (1) (c); and

b) the issuer of the certificate has notified the **[add competent national authority]** that it maintains

records in an electronic form that attest to the existence of the certificate; and

c) the records are accessible to all Contracting State.

Article 13 - Ships not required to carry insurance certificate

1. The **[add competent national authority]** may notify the Secretary-General that, for the purposes of paragraph 1 Article 10, ships are not required to carry on board or to produce the certificate, when entering or departing ports or arriving at or departing from offshore facilities in its territory including archipelagic waters and the territorial sea, provided that the **[add competent national authority]** has notified the Secretary General that it maintains records in an electronic format, accessible to all Contracting States, attesting the existence of the certificate and enabling **[add country]** to discharge its obligations under this regulation.
2. If insurance or other financial security is not maintained in respect of a foreign ship, the provisions of this Act relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the appropriate authority of the State of the ship's registry stating that the ship is owned by that State and that the ship's liability is covered within the limit prescribed in accordance with paragraph 1 of Article 10.
3. A certificate issued in accordance with paragraph 2 shall reflect as closely as possible the form prescribed by rticle 16.

Article 14 - Application for certificate

1. A person may apply to the Authority for the issue of a certificate for a ship that is registered –
   a) in **[add country]**; or
   b) in a State who is not a party to the 1992 Civil Liability Convention.
2. The following documents are to be submitted together with the application[79] –
   a) a notarized copy of the flag certificate showing the name of ship, distinctive number or letters and port of registry;
   b) a notarized copy of the certificate of ownership showing the name and principal place of business of the registered owner; and
   c) receipt of payment of application fee.

[79] The Member State adapting the Model Law may add to the list.

3. In addition to the documents required under paragraph 2, evidence of the following information are to be submitted with the application –
    a) IMO ship identification number;
    b) type and duration of security;
    c) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and period of validity of the certificate which shall not be longer than the period of validity of the insurance or other security.
4. The fees payable on an application for a certificate is **[add amount] exclusive/inclusive** of tax.

Article 15 – Form of Application

An application must be –

a) in accordance with the form approved by the Authority; and
b) accompanied by the fee prescribed in paragraph 4 of Article 14.

Article 16 - Decision on application

1. If the **[add competent national authority]** is satisfied that the registered owner of the ship is maintaining insurance or other financial security for the ship in an amount that will cover the limits of liability referred to in paragraph 1 of Article 10, it shall issue a certificate for the ship within **[add time limit]** working days of submission of application.

2. If the **[add competent national authority]** is not so satisfied that the person providing the insurance will be able to meet his obligations there in under or whether the insurance or other security will cover the registered owner's liability, it shall refuse to issue a certificate for the ship.

Article 17 - Form of certificate

1. A certificate issued in accordance with paragraph 2 shall be in the form set out in the annex and shall contain the following particulars –
    a) name of ship, distinctive number or letters and port of registry;
    b) name and principal place of business of the registered owner;
    c) IMO ship identification number;
    d) type and duration of security;

e) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and

f) period of validity of the certificate which shall not be longer than the period of validity of the insurance or other security.

2. A certificate issued under paragraph 1 –

a) comes into force on the day specified in the certificate; and

b) remains in force for the period specified in the certificate.

3. The period of validity referred to paragraph (2) (b) shall not be longer than the period of validity of the insurance or other financial security.

Article 18 - Cancellation of Certificate of Insurance

1. Notwithstanding paragraph 2 (b) of Article 17, the **[add competent national authority]** may cancel a certificate issued under these Regulations if he is satisfied that the registered owner of the ship is no longer able to maintain his insurance or other financial security for the ship in an amount that will cover the limits of liability specified in paragraph 1of Article 10.

2. The Authority shall give notice of the cancellation to –

a) the registered owner of the ship; and

b) the master (if any) of the ship; and

c) if, when the certificate was issued, the ship was registered in a State who is not a party to 1992 Civil Liability Convention, that State.

3. The cancellation takes effect on the day specified in the notice of cancellation.

Article 19 – Insurance Certificate ceasing to be in force

1. A certificate issued under Article 17 immediately ceases to be in force if, when the certificate was issued –

a) the **[add country]** ship ceases to be registered in **[add country]**; or

b) in relation to a foreign ship registered in a State who is not a party to the 1992 Civil Liability Convention, the ship ceases to be registered in that country or when that country becomes a Contracting State.

Article 20 - Enforcement and Compliance

1. A Port State Control Officer or an Enforcement and Compliance Officer may require the master or other person in charge of a ship to produce to the officer an appropriate insurance certificate for the ship that is in force if –
    a) for a ship that is registered in **[add country]**, the ship is in **[add country]**; or
    b) for any other ship, the ship is at a port in **[add country]** or at an offshore facility in the archipelagic waters or territorial sea of **[add country]**.
2. A person commits an offence if –
    a) the person is subject to a requirement under paragraph 1; and
    b) the person fails to comply with the requirement.

3. An offence under paragraph 1 is an offence of strict liability and any persons referred to in paragraph 2 is liable upon conviction –
    a) in the case of the registered owner -
        i. if an individual, to a fine not exceeding **[add amount]** or imprisonment for a term not exceeding **[add time limit]**, or both;
        ii. if a corporate body, to a fine not exceeding **[add time limit]**; or
    b) in the case of a master, to a fine not exceeding **[add amount]** or imprisonment for a term not exceeding **[add time limit]**, or both.

Article 21 – Detaining of ships

1. A Port State Control Officer or an Enforcement and Compliance Officer may detain a ship in relation to paragraph 1 and 5 of Article 12 and paragraph 1 of Article 20 if the Officer has reasonable grounds to believe that, at the time the ship attempts to leave the port, there is not an appropriate insurance certificate for the ship that is in force.
2. The Port State Control Officer or Enforcement and Compliance Officer may detain the ship until the certificate is produced to the Officer or the Officer is satisfied that the certificate has been obtained.
3. A person commits an offence if –
    a) the person is the registered owner or master of a ship to which this Part applies; and
    b) an Officer has detained the ship under paragraph 1 in a port in **[add country]**; and
    c) the ship departs the port while it is under detention.
4. An offence under paragraph 3 is an offence of strict liability and any persons referred to in paragraph 3 is liable upon conviction –

a) in the case of the registered owner —
    i. if an individual, to a fine not exceeding **[add amount]** or imprisonment for a term not exceeding **[add time limit],** or both;
    ii. if a corporate body, to a fine not exceeding **[add amount];** or
b) in the case of a master, to a fine not not exceeding **[add amount]** or imprisonment for a term not exceeding **[add time limit],** or both.

Article 22 – Time Limit

Rights of compensation under this Act shall be extinguished unless an action is brought there under 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 years' period shall run from the date of the first such occurrence.

Article 23 –Jurisdiction

1. The **[add the Court with jurisdiction]** shall be construed as extending to any claim in respect of a liability incurred by the owner of a ship under this Act.
2. After the fund has been constituted in accordance with Article 7 the **[add the competent court]** in which the fund is constituted shall be exclusively competent to determine all matters relating to the apportionment and distribution of the fund.

Article 24 – Judgment of foreign courts

1. Judgments of foreign courts having jurisdiction under Article 23 of this Act and adjudicating compensation for oil pollution damage are recognized and declared enforceable in **[add country],** unless:
    a) where the judgment was obtained by fraud; or
    b) where the defendant was not given reasonable notice and a fair opportunity to present his case.
2. A judgment recognized under paragraph (1) shall be enforceable in **[add country]** as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be re-opened.

Article 25 - Warships and Government Ships

The provisions of this Act shall not apply to warships or other ships owned or operated by a State and used, for the time being, only on government non-commercial service.

PART III – INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE, 1992

Article 26 - Interpretation

1. For the purpose of this part**:**

"Company" means a body incorporate under the law of **[add country]**, or of any other country;

"Contributing Oil" 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.

"Established claim" means a claim which has been recognised by the 1992 Fund or been accepted as admissible by decision of a competent court binding upon the 1992 Fund not subject to ordinary forms of review and which would have been fully compensated if the limit set out in Article 4, paragraph 4, of the 1992 Fund Convention had not been applied to that incident;

"Fund Convention" means the Fund Convention as amended by the 1992 Fund Protocol known as the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, adopted at London on the 27th November, 1992;

"Fund Convention country" means a country in respect of which the Fund Convention is in force;

"Fund Convention Ship" means a ship registered under the law of a Fund Convention country;

"Guarantor" means any person providing insurance or other financial security to cover an owner's liability in pursuance of Article VII, paragraph 1, of the 1992 Liability Convention.

"import" means import into **[add country]**;

"importer" means the person by whom or on whose behalf the oil in question is entered for customs purposes on importation;

"Terminal installation" means any site for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, including any facility situated off-shore and linked to such site.

"The Fund" means the International Oil Pollution Compensation Fund established by the Fund Convention;

"ton", in relation to oil, means a metric ton

2. Where an incident consists of a series of occurrences, it shall be treated as having occurred on the date of the first such occurrence.
3. The **[add competent national authority]** shall certify, in **[add currency]** the respective amounts which are to be taken as equivalent for a particular day to the sum expressed in special drawing rights in Schedule
4. A certificate purporting to be signed by or on behalf of the **[add competent national authority]** under paragraph (2) shall be conclusive evidence of the matters contained therein and shall be admissible in legal proceedings under this Act upon its production and without proof of the signature thereon.

Article 27 - Objective

The Fund is established with the following aims:

a) to provide compensation for pollution damage to the extent that the protection afforded by the Liability Convention is inadequate;
b) to give effect to the related purposes set out in this Act.

Article 28 – Distribution of the Fund

1. For the purpose of fulfilling its function under paragraph 1 (a) of Article 27, the Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for the damage under the terms of the Liability Convention,
    a) because no liability for the damage arises under the Liability Convention;
    b) because the owner liable for the damage under the Liability Convention is financially incapable of meeting his obligations in full and any financial security that may be provided under Article 10 of that Act does not cover or is insufficient to satisfy the

claims for compensation for the damage; an owner being treated as financially incapable of meeting his obligations and a financial security being treated as insufficient if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under the Liability Convention after having taken all reasonable steps to pursue the legal remedies available to his;

c) because the damage exceeds the owner's liability limited pursuant to paragraph 1 of Article 7 of the part on liability for oil pollution damage in this Act or under the terms of any other international Convention in force or open for signature, ratification or accession at the date of Fund Convention.

Expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize pollution damage shall be treated as pollution damage for the purposes of this Article.

2. The Fund shall incur no obligation under the preceding paragraph if:
   a) it proves that the pollution damage resulted from an act of war, hostilities, civil war or insurrection or was caused by oil which has escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the incident, only on Government non-commercial service; or
   b) the claimant cannot prove that the damage resulted from an incident involving one or more ships.

3. If the Fund proves that the pollution damage resulted wholly or partially either from an act or omission done with the intent to cause damage by the person who suffered the damage or from the negligence of that person, the Fund may be exonerated wholly or partially from its obligation to pay compensation to such person. The Fund shall in any event be exonerated to the extent that the ship owner may have been exonerated under paragraph 3 of Article 5 of this Act. However, there shall be no such exoneration of the Fund with regard to preventive measures.
4.
   a) Except as otherwise provided in sub-paragraphs (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 part of the Act on liability for oil

pollution damage within the scope of application of this Act as defined in Article 3 shall not exceed 203,000,000 units of account[5].

b) Except as otherwise provided in sub-paragraph (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[5].

c) The maximum amount of compensation referred to in sub-paragraphs (a) and (b) shall be 300,740,000 units of account[5] with respect to any incident occurring during any period when there are three Parties to this Act 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, equalled or exceeded 600 million tons.

d) Interest accrued on a fund constituted in accordance with paragraph 1 of Article 8 of the Act under the part on liability for oil pollution damage, 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 **[add 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.

5. Where the amount of established claims against the Fund exceeds the aggregate amount of compensation payable under paragraph 4, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Act shall be the same for all claimants.

6. The Assembly of the Fund may decide that, in exceptional cases, compensation in accordance with this Act can be paid even if the owner of the ship has not constituted a fund in accordance with paragraph 1 of Article 8 of the Act under the part on liability for oil pollution damage, of the Liability Convention. In such case paragraph 4(e) of this Article applies accordingly.

Article 29 – Time limit

Rights to compensation under Article 30 shall be extinguished unless an action is brought thereunder or a notification has been made pursuant to paragraph 3 of Article 30, 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.

Article 30 –Action

1. Subject to the subsequent provisions of this Article, any action against the Fund for compensation under Article 28 of this Act shall be brought only before a court competent under Article 23 of the Act under the part on liability for oil pollution damage in respect of actions against the owner who is or who would, but for the provisions of paragraph 2 of Article 5, of that part, have been liable for pollution damage caused by the relevant incident.

2. Where an action for compensation for pollution damage has been brought before **[add competent national authority]** against the owner of a ship or his guarantor the [**add competent national authority]** shall have exclusive jurisdictional competence over any action against the Fund for compensation under the provisions of Article 28 of this Act in respect of the same damage. Where, in accordance with Rules of the [**add competent national authority]** made for the purposes of this paragraph, the Fund has been given notice of proceedings brought against an owner or insurer in respect of liability under Article 5, any judgment given in the proceedings shall, after it has become final and enforceable, become binding upon the Fund in the sense that the facts and evidence in the judgment may not be disputed by the Fund even if the Fund has not intervened in the proceedings.

3. Where, in accordance with Rules of the Court made for the purposes of this paragraph, the Fund has been given notice of proceedings brought against an owner or insurer in respect of liability under Article 5, any judgment given in the proceedings shall, after it has become final and enforceable, become binding upon the Fund in the sense that the facts and evidence in the judgment may not be disputed by the Fund even if the Fund has not intervened in the proceedings.

Article 31 – Judgment of Foreign Courts

Subject to any decision concerning the distribution referred to in paragraph 5 of Article 28 any judgment given against the Fund by a court having jurisdiction in accordance with paragraph 1 and 3

of Article 30, shall, when it has become enforceable in the State of origin and is in that State no longer subject to ordinary forms of review, be recognized and enforceable in each Contracting State on the same conditions as are prescribed in Article 24 of the Act under the part on liability for oil pollution damage.

Article 32 - Subrogation

1. The Fund shall, in respect of any amount of compensation for pollution damage paid by the Fund in accordance with paragraph 1 of Article 28, of this Act, acquire by subrogation the rights that the person so compensated may enjoy under the Liability Convention against the owner or his guarantor.

2. Nothing in this Convention shall prejudice any right of recourse or subrogation of the Fund against persons other than those referred to in the preceding paragraph. In any event the right of the Fund to subrogation against such person shall not be less favourable than that of an insurer of the person to whom compensation has been paid.

3. Without prejudice to any other rights of subrogation or recourse against the Fund which may exist, **[add country]** or agency thereof which has paid compensation for pollution damage in accordance with provisions of national law shall acquire by subrogation the rights which the person so compensated would have enjoyed under this Act.

Article 33 – Contribution to the Fund

1. Contributions shall be payable to the Fund in respect of oil carried by sea to ports or terminal installations in **[add country].**
2. Paragraph (1) applies whether or not the oil is being imported, and applies even if contributions are payable in respect of carriage of the same oil on a previous voyage.
3. Contributions shall also be payable to the Fund in respect of oil when first received in any terminal installation in **[add country]** after having been carried by sea and discharged in a port or terminal installation in a country which is not a Fund Convention country.
4. The person liable to pay contributions is:
    a. in the case of oil which is being imported, the importer; and
    b. in any other case, the person by whom the oil is received.
5. A person shall not be liable to make contributions in respect of the oil imported or received by him in any year if the oil so imported or received in that year does not exceed 150,000 tonnes.

6. For the purpose of paragraph (5) -
    a. all the companies in a group of companies shall be treated as a single person; and
    b. any 2 or more companies which have been amalgamated into a single company shall be treated as the same person as that single company.

Article 34- Determination of Contribution and Unpaid Contribution

1. The contributions payable by a person for any year shall:
    a) be of such amount as may be determined by the Director of the Fund under Article 12 of the 1992 Fund Convention and notified to her by the Fund;
    b) be payable in such instalments, becoming due at such times, as may be so notified to him,

and if any amount due from him remains unpaid after the date on which it became due, such amount:

    i. shall from that date bear interest, at a rate determined from time to time by the Assembly of the Fund, until it is paid; and
    ii. shall, together with such interest, be recoverable as a civil debt due to the Fund.

2. The **[add competent national authority]** may by regulations require persons who are or may be liable to pay contributions under this provision to give security for payment to the **[add competent national authority]** or to the Fund; and such regulations may:
    a) contain such supplemental or incidental provisions as appear to the **[add competent national authority]** expedient; and
    b) provide that a contravention of specified provisions of the regulations shall be an offence and may provide penalties.

Article 35 – Power to obtain Information

1. The Authority may, for the purpose of transmitting to the Fund a list of the names and addresses of the persons who, under Article 33, are liable to make contributions to the Fund for any year, and the quantity of oil in respect of which they are so liable, by notice in writing require any person engaged in producing, treating, distributing or transporting oil to furnish to a person specified in the notice such information as may be specified in the notice.
2. A notice under this section may require a company to give such information as may be required to ascertain whether its liability is affected by Article 33.

3. A notice under this section may specify the manner in which, and the time within which, it is to be complied with.
4. In legal proceedings by the Fund against any person to recover any amount due under Article 33, any particulars contained in any list transmitted by the Authority to the Fund shall, in so far as those particulars are:
    a) based on information obtained under this provision,
    b) be admissible as evidence of any relevant fact stated in the list; and
    c) particulars which are so admissible are based on information given by the person against whom the proceedings are brought,

those particulars shall be presumed to be accurate until the contrary is proved.

5. A person who discloses any information which has been furnished to or obtained by him under this section, or in connection with the execution of this section, unless the disclosure is made—
    a) with the consent of the person from whom the information was obtained; or
    b) in connection with the execution of this section; or
    c) for the purposes of any legal proceedings arising out of this section, or of any report of such proceedings,

    commits an offence and is liable.[80]

6. A person who:
    a) refuses or wilfully neglects to comply with a requirement of a notice under this section; or
    b) in purporting to comply with a requirement of a notice under this section makes any statement which she knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, commits an offence and is liable.[81]

Article 36 - Legal proceedings

1. Any proceedings by or against the Fund may either be instituted by or against the Fund in its own name or by or against the Director of the Fund as the Fund's representative.
2. Evidence of any instrument issued by any organ of the Fund or of any other document may be given in any legal proceedings by production of a copy certified as a true copy by an official of the Fund; and any document purporting to be such a copy shall, in any such proceedings, be

[80] The limit of the fine may be regulated by the State.
[81] Ibid.

received in evidence without proof of the official position or handwriting of the person signing the certificate.

3. In this section "organ of the Fund" means any subsidiary body established under paragraph 9 of Article 18 of the Fund Convention.

PART IV – MISCELLANEOUS PROVISIONS

Article 37 - Offences by bodies corporate

Where an offence under this Act, which has been committed by a body corporate is proved to have been:

a) committed with the consent or connivance of; or
b) due to any neglect on the part of,

a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, commits that offence and shall be liable to be proceeded against and punished accordingly.

Article 38 - Proceedings Involving the Fund/Supplementary Fund

Any proceedings by or against the Fund may either be instituted by or against the Fund in its own name or be instituted by or against the Director of the Fund as the Fund's representative.

Article 39 - Enforcement of Conventions Relating to Oil Pollution Damage

The **[add competent national authority]** may by regulation give a mandate to such persons as may be designated by or under the regulation to go on board a ship while the ship is within a harbour in **[add country],** and to require a compulsory insurance certificate.

Article 40 - Repealing clause

All laws, decrees, executive orders, regulation, practises or any parts thereof, which are inconsistent with the provisions of this legislation, shall be deemed repealed from the effective date of this Act.

Article 41 - Implementing subsidiary legislations

The Government may adopt policies, regulations, directives and guidelines for implementation of this legislation.

Article 42 - Interpretation

1. This legislation shall be interpreted and implemented consistent with international law particularly the IMO conventions on liability and compensation of oil pollution and other applicable African Union and international treaties ratified by the State.
2. This legislation shall not be interpreted as restricting, modifying or impairing the provisions of the 1992 Liability Convention and the 1992 Fund Convention.

Article 43 - Prevailing Law

Where a provision of an international convention or protocol and a provision of this Act or any regulation in force by virtue of this Act conflict in any manner, the provision of the international convention or protocol prevails.

Article 44 - Effective/commencement date

This legislation shall take effect on …….

Annex

CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF CIVIL LIABILITY FOR OIL POLLUTION DAMAGE

Issued in accordance with the provisions of Article VII of the International Convention on Civil Liability for Oil Pollution Damage, 1992.

Name of ship	Distinctive number or letters	Port of registry	Name and address of owner

This is to certify that there is in force in respect of the above-named ship a policy of insurance or other financial security satisfying the requirements of Article VII of the International Convention on Civil Liability for Oil Pollution Damage, 1992.

Type of Security .....
.....

Duration of Security .....

Name and Address of the Insurer(s) and/or Guarantor(s)

Name .....

Address .....
This certificate is valid until .....
Issued or certified by the Government of .....
….....

(Full designation of the State)

At.....On……...
(Place) (Date)

…….....
Signature and Title of
issuing or certifying official

Explanatory Notes:

1. If desired, the designation of the State may include a reference to the competent public authority of the country where the certificate is issued.
2. If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.
3. If security is furnished in several forms, these should be enumerated.

4. The entry "Duration of Security" must stipulate the date on which such security takes effect.