

A REVIEW OF INTERNATIONAL CONVENTIONS REGARDING THE RESPONSIBILITIES CAUSED BY OIL POLLUTION OF THE SEAS

ANÁLISE DAS CONVENÇÕES INTERNACIONAIS RELATIVAS ÀS RESPONSABILIDADES DECORRENTES DA POLUIÇÃO MARINHA POR HIDROCARBONETOS

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Abstract: The goal of this study was to thoroughly evaluate international conventions concerning the responsibilities caused by oil pollution in marine environment. The research takes an analytical-descriptive approach, with a detailed analysis of relevant literature and research in this topic. The findings emphasize the importance of thorough environmental control across all stages of offshore oil and gas resource development, including exploration, production, transportation, and relocation. Inadequate management of oil and gas leaks in saltwater causes pollution, resulting in severe environmental consequences and eventual accountability. Such responsibility takes the form of both pollution control, and in cases of negligence, civil liability imposed on polluters. Notably, international accords addressing duties arising from maritime oil contamination are critical subjects in oil legislation. This article critically examines the provisions of these treaties that relate to oil pollution-related duties in marine ecosystems, as documented in international legal instruments. In conclusion, the research shows that relying solely on the traditional civil liability foundation

for marine oil contamination not only fails to compensate for real-world harms but also jeopardizes human rights. This undermines the values expressed in international frameworks advocating for a healthy environment, putting future generations' well-being at risk, as outlined in successive international treaties

Keywords: International Conventions. Responsibilities. Oil pollution. Seas

Resumo: O objetivo deste estudo foi avaliar exaustivamente as convenções internacionais relativas às responsabilidades causadas pela poluição por hidrocarbonetos no ambiente marinho. A investigação adota uma abordagem analítico-descritiva, com uma análise pormenorizada da literatura e da investigação relevantes sobre este tema. As conclusões sublinham a importância de um controlo ambiental rigoroso em todas as fases do desenvolvimento dos recursos de petróleo e gás offshore, incluindo a exploração, a produção, o transporte e a deslocalização. A gestão inadequada das fugas de petróleo e gás em água salgada causa poluição, resultando em graves consequências ambientais e eventual responsabilização. Essa responsabilidade assume a forma de controlo da

poluição e, em casos de negligência, de responsabilidade civil imposta aos poluidores. Nomeadamente, os acordos internacionais que abordam as obrigações decorrentes da contaminação marítima por hidrocarbonetos são temas fundamentais da legislação sobre hidrocarbonetos. Este artigo analisa de forma crítica as disposições destes tratados que se referem aos deveres relacionados com a poluição por hidrocarbonetos nos ecossistemas marinhos, tal como documentados nos instrumentos jurídicos internacionais. Em conclusão, a investigação mostra que confiar exclusivamente no fundamento tradicional da responsabilidade civil para a contaminação marinha por hidrocarbonetos não só não compensa os danos reais como também põe em causa os direitos humanos. Este facto compromete os valores expressos nos quadros internacionais que defendem um ambiente saudável, pondo em risco o bem-estar das gerações futuras, tal como referido em sucessivos tratados internacionais

Palavras-chave: Convenções internacionais. Responsabilidades. Poluição por hidrocarbonetos. Mares.

Introduction

The International Maritime Organization has been around for over fifty years and is regarded as one of the specialized organs of the United Nations. This organization is dedicated to enhancing maritime safety and security, preventing and combating pollution of the marine environment, and increasing shipping productivity. The establishment of international laws is a universal goal that the organization is working towards, resulting in conventions, protocols, and numerous resolutions and instructions over the years. Currently, there are 168 members of the International Maritime Organization, and over 70 international and regional governmental and non-governmental organizations provide consulting services to support its mission.

This organization is composed of an assembly, a council, a secretariat, five main committees and nine sub-committees, each with its own duties and responsibilities and holds various meetings throughout the year. The International Maritime Organization or IMO, which was previously known as "International Maritime Consultative Organization" until 1982, is headquartered in London. IMO's objectives are to promote cooperation and exchange of information between member countries in technical issues related to shipping and to establish the highest maritime safety standards. From the outset, IMO has focused on shipping safety and marine pollution prevention, and has also established regulations concerning responsibility and compensation, such as regulations related to pollution caused by ships (Mashirpour, 2011). According to Rousseau, who is a professor of French public law, the government can be held responsible on an international level if they violate a rule

that has been established. It's important for governments to be aware of these rules and regulations so that they can avoid any potential repercussions. As citizens, we should also be informed about international laws and hold our governments accountable if they fail to comply with them (Blanchet, 2002).

According to a report by The Institute of International Law in 1997, governments have an obligation to protect the environment in international law. Failure to do so can result in international responsibility of the government, which means that they will have to return the situation to its original state or pay damages. In terms of international environmental law, one of the most critical tasks of governments is to prevent marine environmental pollution. The primary source of pollution in the seas is the leakage of petroleum products from ships carrying it. Oil and its products are the primary source of pollution in the seas, making it a crucial issue in international environmental law. Petroleum hydrocarbons can enter the sea through various means.

The impact of an oil spill on the marine ecosystem can be devastating. The affected area may suffer from the destruction of plants and animals, and the restoration process may take years. This can have serious consequences for governments and individuals, affecting their livelihoods and the economy. Fishing, tourism, and seafaring are all industries that can be severely impacted by an oil spill, with many people losing their jobs or the opportunity to make a living. In order to minimize the damage caused by oil pollution, it is important to identify those responsible for compensation and to develop effective measures for compensation. Only then can we begin to address the serious environmental and economic impacts of oil spills. Civil liability serves an important purpose in protecting the victim's rights, preventing future damage, and remedying any violations. In customary international law, fault is typically required to establish civil responsibility. However, international environmental law takes a different approach due to the complexities involved in identifying polluters and the associated time and distance factors.

Pure responsibility is often favored in these cases, meaning that establishing the occurrence of damage and attributing it to the ship owner is sufficient to hold them responsible. This is reflected in international conventions like the International Convention on Civil Liability for Oil Pollution Damages. Today, it is widely recognized that compensating for environmental damage is a fundamental principle for protecting the environment. The Stockholm Declaration of 1972 and Rio 1992 both call on governments to work together to further develop international law related to compensation for

environmental damage and pollution victims. The issue of civil responsibility and compensation for damage caused by oil pollution in the sea is a complex problem that has troubled governments for years. The main culprit behind sea pollution is oil and its byproducts, which can be divided into two types: pollution caused by ships and pollution caused by activities on the seabed. With oil exploration and exploitation becoming increasingly common, it is crucial to find ways to prevent further damage to our seas and ensure that those responsible for pollution are held accountable (Joandel Jananlou, 2014).

It is important to consider the potential for oil pollution of the seas in various operations such as exploration, production, transportation, and trade of oil. The effects of marine oil pollution can have serious consequences on the environment, including the human environment. Coastal countries have the right to explore and exploit natural resources, but they must also adopt environmental protection measures. As time has passed and polluting industries have developed, it has become clear that the living environment of humans is more limited than previously thought. To preserve and protect nature and the environment, regulations and standards have been established to prevent environmental pollution. The issue of marine oil pollution was highlighted by the Horizon oil platform accident in the Gulf of Mexico, which sounded a serious alarm for humanity. It is important to examine the traditional and new bases of liability for environmental pollution, especially in the marine environment. International documents have not yet addressed the concept of oil pollution comprehensively, so it is necessary to examine the basis of responsibility in domestic legal systems and international documents.

Methodology

This research is an analytical-descriptive research that was conducted in a library manner and by reviewing various researches and books in this field.

Results and Discussion

The concept of marine oil pollution

Marine oil pollution is a complex issue that can be caused by a variety of factors, from oil leakage from marine structures to cargo oil or ship fuel leakage in the sea. There are various international and regional conventions that deal with this issue, but there is no single definition of oil pollution. To understand and analyze this problem, it is necessary to review different conventions and their definitions. One such convention is the International

Convention on Civil Liability for Compensation for Fuel Oil Pollution from Ships, which Iran joined on February 28th, 2019. While this convention does not provide a definition of oil pollution, it does define terms such as "fuel oil", "accident", and "pollution damage". Based on these terms, it can be inferred that fuel oil pollution refers to pollution caused by the spilling of any hydrocarbon oil from a ship in the territorial sea of a country, which is used in the navigation or propulsion of the ship, and which results from any incident that causes pollution damage or a severe and imminent threat of such damage.

However, it is important to note that this convention only deals with pollution caused by the spilling of fuel oil from a ship in the territorial sea of a member state, and does not cover pollution caused by other factors such as oil exploration and exploitation. Additionally, the convention's definition of "pollution damage" is problematic as it defines the effects of pollution rather than pollution itself. A more effective approach would be to first define pollution and then describe its effects.

International Convention on Civil Liability for Compensation for Fuel Oil Pollution from Ships, which Iran also joined on 2010

Directly covers marine oil pollution. It does not define, but defines the terms (fuel oil), (accident) and (pollution damage), but from the above terms, the interpretation of the convention on oil pollution can also be understood, in fact, from paragraphs 5, 8 and the first article of the above convention. It can be inferred that fuel oil pollution means: pollution caused by the spilling of any hydrocarbon oil from a ship in the territorial sea of a country, which is used in the navigation or propulsion of the ship and as a result of any incident that causes pollution damage or severe and imminent threat The occurrence of such damages. It is natural that according to the title of the convention, its provisions deal only with the pollution caused by spilling of fuel oil and refrain from the pollution caused by the leakage of petroleum materials caused by exploration and exploitation in the sea. On the other hand, from the scope of inclusion listed in paragraph A: Article 2 of the above convention, which considers it to be applicable only in the territorial sea of a member state and it is not possible to generalize it to other parts of the seas, it can be defined and interpreted in the definition and interpretation of oil pollution of the seas. used. It is natural that oil pollution is not caused only by the spilling of fuel oil from a ship and that too in the territorial sea of a country, and a major part of it can happen outside the territorial sea and is not caused by the

fuel oil of the ships, but because exploration and exploitation, oil leakage from the oil cargo of ships, etc. Another shortcoming that can be mentioned in the definition of oil pollution in the above convention is the definition of oil pollution damage instead of (oil pollution). It is very clear that damage is the effect of pollution and is different from self-pollution. Therefore, it would have been better for the convention to first define pollution and then describe the effects of pollution.

The International Convention on Civil Liability for Ship Fuel Oil Pollution Damage, which Iran also joined on 2010 and has considered it as one of its domestic laws.

The topic being discussed is marine oil pollution, and while the convention on oil pollution doesn't give a direct definition, it does provide explanations for important terms such as fuel oil, accident, and pollution damage. From these terms, it can be inferred that fuel oil pollution refers to the spilling of any hydrocarbon oil from a ship in a country's territorial sea, which is used for navigation or propulsion, and causes pollution damage or a severe and imminent threat of such damages. It's important to note that the convention only covers pollution caused by spilling fuel oil and not pollution from petroleum materials caused by exploration and exploitation in the sea. Additionally, the convention only applies to the territorial sea of member states. It's worth mentioning that oil pollution can occur outside of territorial seas and not just from fuel oil spills. Lastly, the convention defines oil pollution damage instead of oil pollution itself, which could be improved by first defining pollution and then describing its effects.

International Convention on Preparedness, Response and Cooperation against Oil Pollution 1990

The International Convention on Preparedness, Response and Cooperation against Oil Pollution 1990 is another convention that can be used in this context to define oil pollution in the seas. It has limited itself from oil to fuel oil and is used for steering and propulsion of the ship, the oil that enters the sea from the ship due to accidents has provided a more comprehensive definition of oil and it includes crude oil, fuel oil, diesel oil and oil. Lubricant knows. Another difference between the two conventions in the definition of oil is the inclusion of lubricating oil in fuel oil in the International Convention on Civil Liability

for Compensation for Ship Fuel Oil Pollution and its removal from fuel oil in the present convention. The second paragraph of Article 2 of this Convention (oil pollution incidents) is interpreted as events or incidents that have the same origin and lead or may lead to oil spills and threaten the marine environment or coastlines or the interests of one or more countries, or It may threaten and require emergency action or other immediate response.

International Convention on Civil Liability for Oil Pollution Damage approved in 1969

The International Convention on Preparedness, Response and Cooperation against Oil Pollution 1990 is a convention that can be used to define oil pollution in the seas. It is limited to fuel oil that is used for steering and propulsion of the ship. However, accidents have provided a more comprehensive definition of oil that includes crude oil, fuel oil, diesel oil, and lubricant oil.

There is a difference in the definition of oil between the two conventions, where lubricating oil is included in fuel oil in the International Convention on Civil Liability for Compensation for Ship Fuel Oil Pollution and removed from fuel oil in the present convention. According to the second paragraph of Article 2 of this Convention, oil pollution incidents are events or incidents that have the same origin and can lead to oil spills, threatening the marine environment or coastlines or the interests of one or more countries. Emergency action or other immediate response may be required to prevent this.

International convention to establish an international fund for compensation for damage caused by pollution

The International Convention on Civil Liability for Oil Pollution Damage, which was approved in 1969 and had its amendment protocol approved in 1992, offers a detailed definition of oil. According to this definition, oil refers to any stable mineral hydrocarbon oil, such as crude oil, black oil, diesel oil, and heavy oil. This definition applies to oil that is transported either as a commodity on a ship or stored in the fuel tanks of a vessel. It is important to have a comprehensive definition of oil in order to accurately define oil pollution. While this definition is more comprehensive than previous ones, it may still not be comprehensive enough to cover all types of oil pollution.

- The regional convention of Kuwait for cooperation on the protection and development of the marine environment and coastal areas was approved on April 24, 1978. This convention, known as FIMA, was adopted by the Persian Gulf countries. According to paragraph A of Article 1 of this convention, marine pollution is defined as including both oil and non-oil pollution. In addition, there is a protocol related to combating pollution caused by oil and other harmful substances in emergency cases. This protocol defines an "emergency at sea" as any event, incident, or situation that leads to significant pollution or an imminent threat of significant pollution in the marine environment by oil substances. The protocol also includes other accidents that happen to ships, including oil tankers, as well as eruptions caused by drilling and oil production activities, and the presence of oil and other harmful substances in the water caused by defects in industrial facilities.

- According to the Marine Oil Pollution Control and Prevention Act approved in 2005 in England, any liquid hydrocarbons or liquid hydrocarbon substitutes, including soluble or insoluble hydrocarbons or hydrocarbon alternatives that are not normally found in the liquid phase at standard temperature and pressure - whether it is defined as plants or animals, are considered as oil. This includes any oil spill in the sea, such as fuel oil, cargo oil, oil resulting from exploration and exploitation activities, and so on. Therefore, any oil and oil material that has leaked into the sea for any reason and caused its pollution is considered as oil pollution in the sea.

International convention to establish an international fund for compensation for damage caused by pollution

The terms fuel oil and crude oil are defined in clauses a and b of article 1 of this convention. It applies to the contracting countries' territory in the sea, the exclusive economic zone, or the area beyond and adjacent to the territorial sea of that state, which is determined by the said state based on international law. This area should not extend more than 200 nautical miles from the source of danger from which the width of the territorial sea will be measured. The law on the protection of navigable seas and rivers against pollution defines oil pollution and sources of oil pollution.

It is interpreted as leaking or spilling of oil or oil materials from ships, oil tankers or platforms, and oil facilities. However, in this article, we mean by oil pollution, leakage or spilling of any hydrocarbon material that enters the sea in any way during exploration,

production, development or transportation. Liability arising from marine oil pollution should be examined from the perspective of domestic law and then from the perspective of international documents.

Domestic law systems

The rules of responsibility in the system aim to protect the interests of society and public rights by compensating for any damages caused to individuals or private property. Traditional and modern law differ in their working methods, scope of responsibility, and definition of responsibility. In countries where traditional rules of liability are applied, cases of pure liability are limited to specific activities as determined by the legislator. However, in the new system of environmental responsibility, there is a presumption of responsibility of the polluter in case of any kind of environmental damage. The principle of pure responsibility is applied in this system, whereas in traditional responsibility, fault is the basis of responsibility. The new system of responsibility for environmental pollution has come about as a result of historical developments and has adapted to the needs of the world. The main goal of this new liability system is the prevention of damage, based on the precautionary principle. Conversely, the goal of traditional responsibility is to compensate for the damage and return the situation to the original state. Proof of causality, lack of follow-up motivation, and the difficulty of estimating the amount of damage in the traditional system make the principle of compensating these damages and the method of compensating them more complicated.

International law system

The issue of international law is quite complex when it comes to protecting the environment. There are many reasons why governments have a universal obligation to protect the environment, whether within their own borders or beyond. In the case of nuclear testing between Australia and New Zealand and France, the International Court of Justice ruled that such actions do not only affect one country, but the entire international community. In fact, there are three international documents that recognize the extensive and severe destruction of the environment as an international crime. These include Paragraph 22, Article 35 of the First Additional Protocol to the Geneva Convention, Article 18 of the

Statute of the International Court of Justice, and the Strasbourg Convention of the European Union. Therefore, it can be argued that the environment is related to the benefit of governments and thus falls under the concept of public order.

The International Law Commission has also stated that obligations related to the environment are collective obligations. It's important to establish obligations between governments in order to protect a collective interest. These obligations may be related to the environment or the security of a region, for example. The inclusion of the environmental category in human rights documents, which has been approved by the Rio Declaration, is a clear indication that international environmental law is shifting away from a sovereignty-oriented process and is entering a humanity-oriented process. In recent times, the principle of confrontation has lost its significance and the values of human guardianship have taken its place.

What causes a government to commit to protecting the environment for future generations is not the mutual commitment of other governments, but rather each government unilaterally committing to the cause. Human rights have different generations, with the first category being called freedom rights, which include civil and political rights and are stated in the Covenant of Civil and Political Rights of 1966. The importance of human rights is evident in many international documents, including the Covenant of Social, Economic and Cultural Rights of 1966. This covenant recognizes social, economic and cultural rights as second-generation human rights.

However, there is growing discussion about the third generation of human rights, which includes the right to a healthy environment. The environment is crucial to human well-being, and international organizations, both governmental and non-governmental, play a key role in protecting it. For instance, the International Authority of Amaq and the legal non-governmental organization Al-Nair have pursued wrongdoers in the international area of Amaq Darya and the British Petroleum Company in the Gulf of Mexico, respectively. These actions represent the population of beneficiaries, including fishermen and coastal residents. Legal benefit has become a collective benefit in at least some environmental issues, highlighting the importance of a healthy environment as a human right.

Conclusion

One of the most common bases of civil liability in world law is the theory of fault or error, which proposes that environmental damages cannot be claimed unless the fault lies with the cause of the damage. However, this theory has not been accepted by international conventions, as it is very difficult to prove fault in the environmental field, especially in cases of marine oil pollution.

Despite this, some legal systems, such as those in Iran and France, still base civil responsibility due to environmental pollution on the theory of fault. Alternatively, some authors argue that civil responsibility should be based on the theory of damage and respect for property. They point out that civil liability rules, including the civil liability law, should be used to determine the basics of responsibility due to environmental pollution. While the theory of wastage can be helpful in analyzing the theory of responsibility caused by oil pollution, it is important to note that in the case of wastage, money is lost either in whole or in part, and the waster has civil responsibility for the loss of property, regardless of whether they are at fault or not. In contrast, in marine oil pollution, there may not be a financial loss, but the territorial and international waters may be polluted, or there may be a possibility of oil pollution of open waters.

International conventions have created a responsibility that cannot be justified in domestic law, especially with the rule of waste. Ultimately, the best approach to civil responsibility due to environmental pollution remains a matter of debate. Responsibility for damages caused by an accident can be a complex issue. Some believe that it falls solely on the individual, while others see it as a government obligation to compensate for damages caused by the loss of property. International obligations may also play a role, especially when it comes to acts or omissions. The theory of risk suggests that responsibility for environmental pollution lies with governments, regardless of whether the acts are prohibited by international law. This theory distinguishes between responsibility due to error and fault, with the former referring to violations of international law and the latter to harmful effects of activities that violate international law. Traditionally, responsibility is discussed after an accident and damage has occurred. However, a new theory proposes formal and executive duties that require governments to implement plans and activities that can have environmental effects, evaluate them, and inform threatened countries.

These duties and obligations are considered responsibilities that occur before causing damage and pollution, unlike the traditional theory where legal responsibility arises after damage has been caused and the perpetrator of the harmful act is known. In 2004, the

Parliament of the Council of Europe approved absolute responsibility, while the European Commission was inspired by the American law on liability in accepting pure responsibility for environmental pollution. It is important to note that American states have accepted the responsibility of releasing dangerous substances into nature. This responsibility can be traced back to accidents and employer activities that caused environmental pollution. The principle of strict liability was accepted in relation to extraordinarily dangerous activities in the basic plan of American civil responsibility published in 1938.

The French environmental liability law was developed in line with these guidelines and tends towards a liability system based on compensation of public rights. The law on the protection of navigable seas and rivers against oil contamination approved in 2010 punishes intentional and unintentional perpetrators of marine oil pollution. It is interesting to note that even the involvement of coercive factors and outside the will of pollution officials is ineffective in compensating for the damage caused by marine oil pollution.

The basis of liability caused by marine oil pollution is discussed in international documents, including conventions, protocols, and declarations. The International Convention on Preparedness, Response and Cooperation against Oil Pollution was approved by the International Maritime Organization in 1990 after the Exxon Valdez ship accident on the coast of Alaska, and became mandatory in 1995. It is important to prioritize quick and effective action in the event of an oil pollution accident to prevent irreparable damage to ships, marine facilities, ports, oil unloading and loading equipment. The goals mentioned for the convention emphasize the need for regional and international cooperation in dealing with oil pollution accidents. Governments are required to have an emergency plan for oil pollution in ships and provide the necessary equipment to deal with oil pollution.

This is especially important considering the environmental conditions and the high traffic of vessels and marine facilities in the Persian Gulf and Oman Sea. It is worth noting that the Islamic Republic of Iran joined the convention on July 29, 2016. All users of the sea, including oil producers, transporters, and shipping companies, are required to have the necessary equipment to prevent oil spills and take preventive measures. The convention prohibits the discharge of oil-containing substances into the sea in special marine areas under any conditions and has restrictions in other areas. Governments are committed to preventing and making the necessary preparations to deal with oil pollution before causing pollution, in compliance with the principle of cooperation and the principle of precaution.

When looking at civil liability, it's important to consider the principles mentioned in conventions and declarations. While these declarations may only be mandatory for signatory countries, they're still considered international custom and governments are obligated to comply with them. With regards to pollution, traditional civil liability can be examined.

This type of liability requires three elements: the occurrence of damage, the harmful act, and the causal relationship between the two. However, in cases of environmental pollution, especially oil spills in the open sea, adhering to traditional civil liability principles can be difficult. There may be no direct victim in these situations, making it hard to prove the causal relationship between the harmful act and the damage caused. Believing in traditional civil liability in these cases not only makes it difficult to compensate for damages, but also endangers human rights, which is a violation of international documents regarding a healthy environment and the third human generation.

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